DE
Laudibus Legum Angliæ

written by

Sir JOHN FORTESCUE

L. *Ch. Justice*, and after L. *Chancellor* to K. *Henry* VI.

Hereto are Added the two *Sums* of

Sir RALPH *de* HENGHAM

L. *Ch. Justice* to K. *Edward* I. commonly calld Hengham *Magna*, and Hengham *Parva*.

WITH

Notes both on FORTESCUE and HENGHAM.

By that Famous and Learned Antiquarie JOHN SELDEN Esq.

LONDON,

Printed (By Permission of the Company of Stationers) for *Abel Roper* at the Sun against Saint *Dunstans* Church in Fleetstreet. 1660.

(1)

To the Reader.

His Author Sir John Forteſcue, *was Chief Juſtice to* Hen. VI. *as the Records of the latter half of his Reign, every where ſhew; and that he might* Statum ſuum decentiùs manutenere, *in* Part 1. Rot. Pat. 20. Hen. 6. membran. 10. *an annuity of* CLXXX *marks is given him out of the Hamper,* Cxvj. s. xj. d. q. Percipiendum ſingulis annis ad feſtum Pentecoſtes pro una roba & furrura pro eadem, erga idem feſtum, *and* Lxvj. s. vj. d. ſingulis annis ad feſtum Pentecoſtes pro una roba & linura pro eadem erga idem feſtum. *He is call'd his Chancellour alſo. In this book, his title, given by himſelf, is* Cancellarius Angliæ, *and in his* Declaration, *or rather* Retractation, *of that he had written againſt the title of the houſe of* York, *himſelf puts in the mouth of a friend of his expoſtulating with him, theſe words,* **Conſidering that ye were the chief Chancellour to the late**

late King. *It ſeems, being with* Henry VI. *driven into* Scotland, *he was made his Chancellor, the memory whereof (as it could hardly be otherwiſe) wants in the Patent-Rolls. His Books which I have ſeen are three. This now newly publiſht, his* Difference *between* Dominium Regale *and* Dominium Politicum *and* regale, *and that* Declaration *touching the title of the Crown. Neither of the two laſt were ever publiſht, but they remain* Mss. *in divers hands. As touching his deſcent: by good teſtimony, he is made ſon to* Henry Forteſcue *ſonne of Sir* John Forteſcue *Knight,* (Captain *of* Meaux, *and Governour of* Brie *in* France, *under* Hen. V.) *who was ſecond ſonne of* William Forteſcue *of* Wimeſton *in* Devonſhire *Eſquire. Becauſe he was Engliſht by him that firſt publiſht him, this, part of the title, and the notes on him are in Engliſh. What he hath of the* Commendations of the Law of England, *muſt not be expected to be ſo copious, as if all, that might thereof have been ſaid, had been hunted for by him to be here congeſted. He ſhewes that he inſtructed the young Prince, and only in ſome ſuch few Occurrences of our trials and poſitions, as might be, without difficultie, apprehended by a minde ſo tender and ſtrange to*

the

the Courts of Judicial contention. Neither gives he enough to satisfie the malice, or the ignorance of some foul-mouth'd declaimers against it, who for the most part (if they descend to particulars, and make a case to finde fault withal) either ridiculously compact things incompatible, just like the Sycophant in that Geographie of his in Trinummus.

Omnium primum in Pontum advecti ad Arabiam terram sumus
And thence
Ad Caput amnis quod de Cœlo exoritur sub solo ovis,

or else, measuring an established and universal proceeding or position only by their own damage, never coming near apprehension of the true reason, raile at it, with like judgment, as the Parasite in a lost Comedy of Plautus, *doth at the certain course of Sun-Dials, being thence only moved, because the shadow went not so fast as his stomach, which when he was a Childe was the only Dial, and that*

——Iste monebat esse, nisi quùm nihil erat
Nunc etiam quod est non est,
nisi SOLI lubet

But no place is here for more of this, and nos hac scabie tenemus ungues. *To this Edi-*

tion are added the Sums of Sir Ralph de Hengham, *Chief Justice to* Edw. I. *never till now printed; in whom although most of the learning be touching* Essoyns, Defaults, *and course of proceedings in such actions which are in ill dem use at this day, yet divers things occur, both specially observable in what he hath touching those proceedings, (which a Professor of the Law cannot but wish to know) as also he often otherwise gives light to the Customs or Law of his time, whence, as through an Ancestor of the right line, we must deduct that of the present. Of him in the Preface to the Reader, before him, enough is said, and of his* Summs. *Of his language, which with the rest of our Common Law Latin is accused of Barbarism, somewhat is there brought in excuse. That preface was thought fit to speak Latin, the Autor of the Book himself being published only in that tongue. But the Notes are English. For what other readers then English are to be expected? Many an Ignorant had been deterred by pure Latin, and to have used Barbarism in them would have turn'd the stomach of a Polite Reader. Though divers Copies of* Hengham *were examin'd in preparing this, yet could not a perfect one be extracted from them all. As one*

helps

helpt another, choice was so made that this might be the best; which yet is not without many faulty passages. So faithfully it is publisht from the Mss. *that even the false language, which by consent of old Copies appear'd not to be the transcribers, but proceeded from the ages either negligence or ignorance, is religiously retain'd, so should the lost monuments of ancient Writers be given to the publick; so should we abstain from wronging their* Manes. *Some places, that the erring hands of such as anciently Copied him corrupted, are by way ('mongst other observations collected in the heat of the Presse) noted, and either by conjecture restored, explained, or marked with asterisks, left to better judgment. The varying of Letter in the print, is only to lead the Readers eye the sooner to what he may look after. Farewel.*

From the Inner Temple,
Septemb. XXIV.
CIↃ. Dc. XVI.

He that firſt publiſh't *Fortescue*, added the Epiſtle and Dedication following.

Pio Lectori.

ISTius non minus pii, quam eruditi opuſculi exemplar, nactus, quum antiquitatem venerandam, unâ cum eruditione ac pietate conjunxerim: Non potui optime lector, aut patriæ tam ingratus, aut antiquitatis tam inofficioſus cultor eſſe, ut te illius lectione diutius fraudarem. Continet enim in ſe (ut cætera taceam) politicarum, & civilium noſtræ Angliæ legum, quibus præclara & florentiſſima hæc reſpub-

respublica sub illustrissimo & nunquam satis laudato principe nostro rege Henrico sexto, ejusque progenitoribus regibus Angliæ hactenus felicissime fuerit erecta, instituta & gubernata, doctissimum encomion. Unde easdem nostras leges non solum Romanorum Cæsarum, sed & omnium aliarum nationum constitutiones, multis parasangis, prudentia, justitia, & equitate, præcellere, facile perspicias. Eme ergo, lege, & fruere, aclabores nostros boni consule.

Vale.

To the Right VVorſhipful *JOHN WALSHE* Eſquire,

one of the Queen her learned Juſticers of her Highneſſe Court of Common Pleas, *Robert Mulcaſter* wiſheth life and health.

IT hapned me of late (Right Worſhipful Sir) to light upon this little Treatiſe, which I incontinent deſired to runne over, becauſe it ſeemed to diſcourſe upon ſome points of the Lawes of our Countrey, wherof I my ſelfe then was and am now a Student. When I had over-runne it, my deſire to reade it, became nothing countervailable with the gladneſſe that I had read it, for my deſire to reade it came upon hope, to finde ſome profitable leſſons for my ſtudie, but my gladneſſe after reading ſprang of the excellency of the argument, whereon I did not dream, neither to finde ſo rich a treaſure in ſo ſimple an habit. And becauſe

becauſe I wiſhed all men to have part of my delight, me thought it good to tranſlate it into Engliſh forth of Latin, in which tongue it was firſt written. The Author of the book was one Maſter *Forteſcue* Knight, Serjeant at the Law, and for his skill and vertues preferred by King *Henry* the ſixt, to be Chancellor of this Realm. The entry of the book it ſelf ſheweth, where, and upon what occaſion, it was written. It was written in *Berry* in *France*, where Prince *Edward*, ſonne to *Henry* the ſixt, afterward ſlaine at *Tewkeſburie* by *Edward* the fourth, did then remaine with his Mother Queen *Margaret* in the Houſe of *Renate* her Father, Duke of *Angew* and King of *Cicile*, during the time that *Edward* the fourth reigned in the Realme, and *Henry* the ſixt was fled into *Scotland*. The occaſion was this: The Chancellor being fled into *France* with the young Prince, and perceiving his delight to be all bent to Chivalrie as a thing of greateſt need, conſidering he meant by force the reſtitution of his Father, and thereby his own, to the Kingdom of *England*, took occaſion (for that his hope was to ſee the Prince reigne here)

here) to move him to a diviſion of his affairs, and as he armed himſelf againſt the enemy, ſo to adorne himſelf againſt his being King, with skill of Lawes, which do preſerve each ſtate ſo in peace, that it may, if need be, warre; and ſo guard it in warre, that it may have peace in it. The argument is this, that the skill of the Country Laws is needfull for the Prince, although not ſo deep as for purpoſed profeſſours, yet ſo full as to their honor may and ought to fall in Princes. And for that the Prince ſhould think the thing to be a princely knowledge, he taketh occaſion (by comparing the Government of this Realm with others, and the laws of this Land with the Civill, with whom it is of all men lightly compared, and the betterneſſe of points wherein they both travel, and proviſions by the one wiſelier foreſeene then by the other) to prove the ſingularitie of this ſtate which it behooved the Prince to learn, ſeeing he was like to ſucceed his Father, and to underſtand the Lawes, which maketh the ſtate to be ſingular. The particulars I refer to the book, whereof thus much I do, and no leſſe could

could well say, Why I did choose your Worship to be Protector of my labours, I shall not need tediously to touch, it shall be sufficient to say, that in choice of many, I picked you alone, not doubting your liking in allowing, seeing mine election in dedicating: And so committing to the Almightie the good preservation of your worship, I humbly take my leave,

(***)

Rob. Mulcaster.

During the cruel rage of the late mortall warres within the realme of England, when the most vertuous and godly King Henry the sixt, with Queene Margaret his wife, the Kings daughter of Jerusalem and Cicile, and their only sonne Edward Prince of Wales, were forced to fly the land: and the King himselfe afterward in the same civil tumult falling into the bloody hands of his deadly enemies his own Subjects, was of them committed to prison, wher he a long time remained in strait captivity, the queen & the prince her son thus banished out of their Country, making their abode in the Dutchy of Berry, a dominion of the forsaid King of Jerusalem.

SEuiente dudum in regno Angliæ nefandissima rabie illa, qua *piissimus* ibidem Rex *Henricus sextus*, cum *Margareta* Regina coniorte sua, filia Regis *Jerusalem & Scicilie*, ac eorum unigenito *Edwardo* principe *Walliæ*, inde propulsi sunt sub qua & demum Rex ipse Henric'a subditis suis deprehensus, carceris diutinum passus est horrorem, dum regina ipsa cum sobole, patria sic ex torris, in Ducatu *Berre* ñ prædicti regis Jerusalem dominio, morabantur.

Prin-

Princeps ille, mox ut factus eſt adult', militari totum ſe contulit diſciplinæ, & ſæpe ferocibus & quaſi indomitis inſedens caballis, eos calcaribus urgens, quandoque lancea, quandoq; mucrone, aliis quoque inſtrumentis bellicis, ſodales ſuos, juvenes ſibi ſervientes, bellantium more invadere ferireque, juxta martis gimnaſii rudimenta delectabatur. Quod cernens miles quidam grandævus, prædicti regis Angliæ Cancellarius, qui etiam ibidem ſub hac clade exulabat: principem ſic affatur,

The Prince ſhortly after growing to mans ſtate, applied himſelf wholly to the feates of armes, much delighting to ride upon wilde & unbroken horſes, not ſparing with ſpurs to breake their fierceneſs. He practiſed alſo ſometimes with the pike, ſometimes with the ſword, & other warlike weapons after the maner and guiſe of warriors according to the uſe of martiall diſcipline, to aſſaile and ſtrike his companions, I meane the young men that attended upon his perſon. Which thing when a certaine ancient Knight, being Chancellor to the foreſaid King of England ſaw, who alſo in the miſerable time did there remaine in exile, he ſpake thus to the Prince.

Firſt

Chap. 1. *First he moveth the Prince to the knowledge of the Law.*

YOur singular towardnes, most gracious Prince, maketh me right glad, when I behold how earnestly you do embrace martial feats: For it is convenient for your grace to be thus delighted, not only for that you are a soldier, but much rather for that you shall be a King. For it is the office & duty of a King to fight the battailes of his people, & also rightly to judge them, as in the viii. chapter of the first book of Kings you are plainly taught. Wherefore I would wish your grace to be with a earnest zeal given to the study of the lawes, as you are to the knowledge of armes.

GAudeo vero, *Serenissime princeps*, super nobilissima indole tua: videns quanta aviditate militares tu amplecteris actus, convenit namq; tibi taliter delectari, nedum quia miles es, sed amplius quia Rex futurus es. *Regis nempe officium pugnare est bella populi sui, & eos rectissime judicare*, ut primo regum capitul. viii. clarissime tu doceris. Quare ut armorum, utinam & legum studiis, simili zelo te deditum contemplarer,

cum *ut armis bella, ita legibus judicia, peraganiur.* Quod *Juſtinianus Auguſtus*, æquiſſima libranſ mente, in initio prohemii libri ſui inſtitutionum, ait, *Imperatoriam Majeſtatem non ſolum armis decoretam, ſed & legibus oportet eſſe armatam*, ut utrumque tempus bellorum & pacis recte poſſit gubernare. Tamen ut ad legum ſtudia feruide tu anheles, maximus legiſlator ille *Moyſes*, olim Synagogæ dux, multo fortius Cæſare te invitat, dum regibus

becauſe that like as wars by force of Chivalry are ended, even ſo judgements by the Laws are determined. **Which thing** Juſtinian the Emperour **well and wiſely & adviſedly pondering, in the beginning of the preface of his book ſaith thus:** It beheveth the Imperial majeſty not only to be garded with armes, but alſo to be armed with Laws, **to the end that he may be able right ly to execute the government of both times alwell of war as of peace. Howbeit for your moſt earneſt endeavor to the ſtudy of the Law the exhortation of the chiefeſt lawmaker** Moſes, **ſometime Captain of the Synagogue, ought to be of much more force with you, then the words**

words of Justinian; whereas in the xvii. Chapter of the booke of Deuteronomy he doth by the authority of God straitly charge the Kings of Israel to be leaders of the law all the dayes of their life, saying thus: When the King shall sitte upon the Princely seat of his Kingdome, he shall write him out this Law in a booke, taking the copy thereof of the Priests the Levites: and he shall have it with him, and he shall reade it all the dayes of his life, that he may learn to fear the Lord his God, and to keepe his Commandements and Ordinances written in this Lawe, And Helynandus exponning the same, saith thus:

Israel divini auctoritate ipse præcipiat, eorum leges legere omnibus diebus vitæ suæ, sic dicens: *Postquam sederit Rex in solio regni sui describet sibi Deuteronomii Leges in volumine; accipiens exemplar a sacerdotibus Leviticæ tribus & habebit secum, leget-que illud omnibus diebus vitæ suæ, ut discat timere Dominum Deum suum, & custodire verba & ceremonias ejus quæ in lege scripta sunt* Deuteron. capit. decimo septimo, quod exponens *Helynandus* dicit:

Princeps ergo non debet juris ignarus eſſe, nec prætextu militiæ legem permittitur ignorare. Et poſt pauca, a ſacerdotibus Leviticæ tribus aſſumere jubetur exemplar legis, id eſt a viris Catholicis & literatis, Hæc ille: Liber quippe Deuteron. eſt liber legum, quibus Reges Iſrael ſubditum ſibi populum regere tenebantur. Hunc librum legere, jubet *Moyſes* Reges, ut diſcant timere Deum, & cuſtodire mandata ejus, quæ lege ſcripta ſunt.

A Prince therefore muſt not be ignorant of the law, neither is it tollerable that he under the pretence of warfare ſhould be unskilfull in the Law. And a little after hee is commanded, ſaith he, to receive the coppy of the law of the prieſts the Levites, that is to ſay, of catholike and learned men, Thus much hee: For the book of Deuteronomy is the book of the lawe, wherewith the Kings of Iſrael were bound to rule and governe their ſubjects. This booke doth Moyſes command Kings to read, that they may learn to fear GOD, and keepe his Commandments, which are written in the Law

Behold

Beholde the effect of the law is to fear God, whereunto man cannot attain, unlesse hee first know the will of God, which is written in the Law. For the principall point of all service is to know the will and pleasure of the lord or master to whom service is due. Howbeit the law maker, Moyses first in this charge mentioneth the effect of the Law, that is the feare of God, and next he alloureth us to the keeping of the cause thereof, that is to say, of Gods commandements. For in the mind and intent of the exhorter, the effect goeth before the cause. But what fear is this, which the lawes doe propone to the observers thereof?

Ecce *timere Deum effectus est legis*, quem non consequi valet homo, nisi prius sciat voluntatem Dei, quæ in lege scripta est. Nam principium omnis famulatus, est scire voluntatem domini cui servitur. Legis tamen lator *Moyses*, primo in hoc edicto effectum legis videlicet timorem Dei commemorat: deinde ad custodiam causæ ejus, videlicet, mandatorum dei ipse invitat. Nam effectus prior est quam causa, in animo exhortantis. Sed quis est timor iste, quem promittunt leges observatoribus suis?

Vere

Verè non eſt timor ille, de quo ſcribitur: Quod perfecta charitas foras mittit timorem. Timor tamen ille, licet ſervilis, ſæpe ad legendum leges, reges concitat, ſed non eſt ipſe proles legis Timor vero, de quo hic loquitur Moyſes, quem & pariunt leges, eſt ille de quo dicit propheta. *Timor Domini ſanctus permanet in ſeculum ſeculi.* Hic filialis eſt & non novit pœnam, ut ille qui per charitatem expellitur.

Surely it is not that fear whereof it is written: that perfect charity or love expelleth fear. Yet this ſame fear, though it be bond and ſervile, oftentimes provoketh kings to the reading of the Laws: but it proceedeth not out of the law. But that fear whereof Moſes here ſpeaketh, which alſo proceedeth out of the Laws, is the ſelf ſame fear, that the Prophet ſpeaketh of, ſaying: The fear of the Lord is holy, and endureth for ever and ever. This is ſuch a loving fear as naturally children bear to their dear parents, commonly tearmed the reverence of the child towards his parents. Whereunto there is no puniſhment due as a thing wrought by love.

For

For this fear proceedeth out of the Laws, which teach to doe the will of God, so that it deserveth no punishment. But the glory of the Lord is upon them that fear him, and he doth glorifie them. For this fear, is even that same fear, whereof Job, after that he had diversly searched for Wisdome, saith thus: Behold the fear of the Lord is perfect wisdom, and to forsake evill is understanding. That the forsaking of evill is the understanding of the fear of God, this do the Laws teach, whereby it followeth that the same fear proceedeth out of them.

Nam ista à legibus proficiscitur, quæ docent facere voluntatem Dei, quo ipse pænã non meretur. Sed gloria domini est super metuentes eum, quos & ipse glorificat. Timor autem iste, timor ille est, de quo *Job*, postquã multifariè sapientiam investigat, sic ait: *Ecce timor domini, ipsa est sapientia, & recedere à malo intelligentia.* Job ca. 28. Recedere à malo, quod intelligentia timoris dei est, leges docent, quo & timorẽ hunc ipsæ parturiunt.

Ch. 2. *The Princes reply to the Chancellors motion.*

HÆc ut audivit *princeps*, erecto in ſenem vultu, ſic locutus eſt. Scio, Cancellarie, quod liber *Deut.* quem tu comemoras, ſacræ ſcripturæ volumen eſt; leges quoque & ceremoniæ in eo conſcriptæ, etiam ſacræ ſunt, a domino editæ, & per *Moyſen* promulgatæ: quare eas legere ſanctæ contemplationis dulcedo eſt. Sed lex, ad cujus ſcientiam me invitas, humana eſt, ab hominibus edita, & tractans terrena: quo, licet *Moyſes* ad Deu. lecturam Reges Iſrael aſtrinxerit, eum per hoc reges a-

The Prince hearing this, and ſtedfaſtly beholding the old man, ſpake thus to him. I know, good Chancellor, that the book of Deuteronomy, whereof you ſpeak, is a book of holy Scripture: The laws alſo and ordinances therein contained are holy, of the Lords making, and publiſhed by Moſes: Wherefore the reading of them is a pleaſant act of holy contemplation. But that Law, to the knowledge whereof you counſel me, is humane, made by men, and intreating of worldly matters: wherefore though Moyſes bind the Kings of Iſraell to the reading of Gods Law, yet that thereby he foreeth

forceth all other Kings to doe the like in their own lawes, that standeth by no good reason, seeing that of both the readings the cause is not like.

lios, ad consimiliter faciendum in suis legibus, concitasse, omnem effugit rationem, cum utriusque lecturæ non sit eadem causa.

Ch. 3. *Here the Chancellor fortifieth his assertion*

I Perceive (quoth the Chancellor) by your answer, most worthy Prince, how earnestly you have considered & weighed the quality of my exhortation: So that hereby you doe much encourage me, both more plainely, more largely, and also more deeply to discourse the same. Wherefore you shall understand, that not onely Gods Lawes, but also mans, are holy, for so much as the Lawe is defined by

AT Cancellarius. Scio (inquit) per hæc quæ jam dicis, princeps clarissime, quanta advertentia, exhortationis meæ tu ponderas qualitatem, quo me non infimè concitas super inceptis nedum clarius, sed & profundiꝰ quodammodo tecꝫ disceptare: Scire igitur te volo, quod non solum Deut. leges, sed & omnes leges humanæ sacræ

cræ ſunt, quo lex ſub his verbis definitur: Lex eſt ſanctio ſancta jubens honeſta, & prohibens contraria, ſanctum etenim eſſe oportet, quod eſſe ſanctum definitum eſt Jus etiam deſcribi perhibetur, quod illud eſt ars boni & æqui, cujus merito quis nos Sacerdotes appellat. *Sacerdos* enim, quaſi ſacra dans, vel ſacra docens, per etymologiam dicitur, quia ut dicunt, jura, leges ſacræ ſunt quo eas miniſtrantes & docentes, Sacerdotes appellantur. Adeo etiam ſunt omnes leges editæ, quæ ab homine promulgantur. Nam cum

theſe words: The law is a holy ſanction or decree, commanding things that be honeſt, and forbidding the contraries: Now the thing muſt needs be holy, which by definition is determined to bee holy. Right alſo, by deſcription is called the Art of that which is good & ſtreight, ſo that in this reſpect a man may well call us *Sacerdotes*, that is to ſay, givers or teachers of holy things (for ſo by interpretation doth *ſacerdos*, ſignifie.) Forſomuch then as the laws are holy, it followeth that the miniſters & ſetters forth of them may right well be called *Sacerdotes*, that is givers & teachers of holy things. Furthermore all laws publiſhed by men have alſo their authority from God,

For

For, as the Apostle saith, all power is from the Lord God. Wherefore the laws, that are made by man, which thereunto hath received power from the Lord, are also ordainings of God, as also appeareth by this saying of the Author of all causes: What soever the second cause doth, the same doth the first cause by a higher & more excellent mean. Wherefore Josaphat the king of Juda saith to his Judges: The judgements, which ye execute, are the judgements of God, in the nineteenth Chapter of the second book of Cronicles. Whereby you are taught, that to learn Laws, though they bee Mans laws, is to learn holy laws and the ordinances of God: so that the

cat Apostolus, quod omnis potestas a Domino Deo eli, leges ab homine conditæ, qui ad hoc a Domino recipit potestatem, etiam à Deo constituuntur, dicente *Auctore causarum: Quicquid facit causa secunda, facit & causa prima, altiori & nobiliori modo.* Quare Josaphat Rex *Juda*, ait Judicibus suis. *Judicia, quæ vos profertis, judicia Dei sunt*, secundo Paralipo. xix. Capitul. Ex quibus eruditis, quod leges, licet humanas, addiscere, est addiscere leges sacras & editiones dei, quo earum

studium

ſtudium non vacat a dulcedine conſolationis ſanctæ. Nec tamen, ut tu conjicis, dulcedo hujuſodi cauſa fuit, cur *Moyſes* reges Iſrael Deut. legere præceperat. Nam cauſa hæc, non plus reges quam plebeios, ad ejus lecturam provocat, nec plus Deut. librum, quam alios Pentateuchi libros legere. pulſat cauſa iſta, cum non minus libri illi, quam Deut. ſacris abundant cariſmatibus, in quibus meditari profanctum eſt. Quare non aliam fuiſſe cauſam mandati hujus, quam quia in Deut. plus quam in aliis libris veteris teſtamenti, leges inſe-

ſtudy of them is not without a pleaſant ſweetneſs of holy conſolation. And yet ſuch ſweet pleaſure was not the cauſe, as you ſuppoſe, wherefore Moyſes commanded the Kings of Iſrael to read the lawes of Deut. For this cauſe moueth not Kings no more then the common ſort to the reading of it, nor to the Book of Deuter. more then of any of the other books of Moſes, in which aſwel as in the book of Deut. is plentifull ſtore of godly leſſons & holy inſtructions, wherein to bee deboutely occupied is a holy thing wherefore that there was none other cauſe of this commandement, then for that the lawes, whereby the king of Iſrael is bound to rule his people, are more preciſely

contained

contained in the Book of Deuteronomy then in the other books of the old testament, the circumstances of the same commandement do manifestly inform us. For which cause you ought, most worthie Prince, no lesse then the kings of Israel, to be moved and provoked, to be a diligent traveller in the study of those lawes, whereby hereafter you shall rule your people. For that which was spoken to the king of Israel, must be understood to be figuratively spoken to every kind having dominion over godly people. And have I not then well & holsomly propounded unto you the commandment given to the kings of Israel, concerning the learning of their law?

runtur, quibus rex Israel populum regere obnoxius est ejusdemmandati circumstantiæ manifeste nos informant. Quo & te, princeps, eadem causa, non minus, quam reges Israel exhortatur, ut legum, quibus populum in futurum reges, tu sis solers indagator. Nam, quod regi Israel dictum est, omni Regi populi videntis deum typice dictum fuisse intelligendum est. An tunc non convenienter utiliterque propositi tibi mandatum Regibus Israel latum, de eorum lege addiscenda?

Dum nedū ejus exem-

emplum, ſed & ejus auctoritas figuralis, te erudivit & obligavit, ad conſimiliter faciendum de legibus regni, quod annuente Domino hæreditaturus es.

Forasmuch as not onely his example, but also his like authority, hath taught you, and bound you to the like doing in the Laws of the kingdom, which God willing you shall inherite.

Chap. 4. *Here the Chancellor proveth that a Prince by the lawes may be made happy and blessed.*

NOn ſolũ ut d.ũ timeas, quo & ſapiens eris, *princeps colendiſſime*, vocant te leges, cũ prophetæ dicente, *Venite filii audite me, timorem domini docebo vos*: Sed etiã ut felicitatem, beatitudinemq; (prout in hac vita nãciſci poteris) adipiſcaris, ipſæ leges ad earum diſciplinatum te invitant. Philoſophi namque

NOt only to the intent you ſhould fear God and ſo become wiſe, doe the Lawes with the Prophet call you, ſaying, Come Children; heare me, I will teach you the feare of the Lord: but alſo that you may aſpire unto felicity and bleſſednesſe (as farre forth as in this life they may bee attained) do the Laws will you moſt gracious Prince, to bee ſtudious of them. For all the Philoſophers, which

which have so diversly reasoned of felicity, have all agreed together in this one point, that felicity or blessednesse is the end of all mens desire, and therefore they call it chief goodnesse. How bee it the Peripatetikes placed it in vertue, the Stoicks in Honesty, and the Epicures in Pleasure. But seeing the Stoicks designed Honesty to bee that, which is well and laudably done with vertue, and the Epicures held nothing to be pleasant without vertue, therefore all those sects, as saith Leonard Aretine, in his Introduction to Morall Philosophy, agreed in this, that it is onely vertue that causeth felicity. Wherefore Aristotle also in the 7. book of his poli-

omnes, qui de felicitate tam varie disputabant, in hoc uno convenerunt, *viz.* quod felicitas sive beatitudo finis est, omnis hūani appetitus, quare & ipsam summum bonū appellant, *peripatetici* tum constituebant eā in virtute: *Stoici* in honesto: & *Epicuri* in voluptate. Sed qui *Stoici* honestum definiebant esse qd bene sit & laudabiliter ex virtute, & *Epicuri* asserebant nihil esse voluptuosū sine virtute, Omnes sectæ illæ, ut dicit *Leonardus Aretin'* Isagogico moralis disciplinæ, in hoc concordaverunt, quod sola virtus est, quæ felicitatē operatur.

Quo & Philoſophus (in 7. polit. felicitatem definiens) dicit, quod ipſa eſt perfectus uſus virtutū. His jam preſuppoſitis, conſiderare te volo etiam ea quæ ſequentur. Leges humanæ non aliud ſunt quam regulæ, quibus perfecte juſtitia edocetur. Juſtitia vero, quam leges revelant, non eſt illa, quæ commutativa vel diſtributativa vocatur, ſeu alia quævis particularis virtus ſed eſt virtus perfecta, quæ juſtitiæ legalis nomine deſignatur. Quam *Leonardus* prædictus ideo dicit eſſe perfectam, quia omne vicium ipſam eliminat, & omnem virtutem ip-

tiques defining Felicity ſaith, that it is the perfect uſe of Vertues. Thus much being now preſuppoſed, I would have you to conſider theſe things alſo that follow. Mans lawes are nothing elſe but certaine rules, whereby Juſtice is perfectly taught. But that Juſtice, which the Lawes doe ſhew, is not the ſame that is called Commutative or diſtributive, or any other particular vertue, but it is a perfect vertue expreſſed by the name of Juſtice legal. Which the foreſaid Leonard doth therefore affirm to be perfect, becauſe it excludeth all vice, and teacheth all vertue: For which cauſe alſo it is worthily called by the name of all vertue:

Wherof

Whereof Homer saith, and likewise Aristotle in the fifth Booke of Morall Philosophie, that it is the chiefest of all vertues, and that neither Lucifer nor Hesperus are so bright and beaming as it is. Moreover this justice is the thing whereupon all Princely care dependeth and resteth, without the which the King can neither rightly judge, nor yet duly fight. But this being once obtained and perfectly kept, then all the whole duty required in a King is fully performed. Now then, seeing that the perfect use of vertues is felicity, and that Justice used amongst men, which cannot be obtained unto, nor learned but by the Law,

sa docet: quo & omnis virtus ipsa merito nuncupatur. De qua Homerus dicit, similiter & philosophus quinto Ethicorū, Quod ipsa est præclarissima virtutū, &, nec Lucifer, nec Hesperus, ut illa, est admirabilis. Justitia vero hæc, subjectum est omnis regalis curæ, quod sine illa Rex juste non judicat, nec recte pugnare potest. Illa vero adepta, perfectéq; servata, æquissimè peragitur omne officiū Regis. Unde cum perfectus usus virtutum sit fœlicitas, & Justitia humana, quæ non nisi per legem perfecte nanciscitur,

citur, aut ducatur, nedum ut virtutum effectus, ed & omnis virtus. Sequitur, quòd justitia fruens fœlix per legem est, quo & per eam, ipse sit beatus, cum idem sit beatitudo & fœlicitas in hac fugaci vita, cujus & per justitiam ipse summum habet bonum. Tamen non nisi per gratiam lex poterit ista operari, neque legem aut virtutem sine gratia tu addiscere poteris, vel appetere. Cum, ut dicet Pariss. in libro suo de *Cur Deus homo*, virtus hominis appetetitva interior,

is not only the effect of vertues, but is all vertue it selfe: hereof it followeth, that the practiser of Justice is by the lawe happie, and so thereby he is made blessed, forsomuch as blessednesse or happinesse and felicitie are both one in this short and transitorie life, of the which life through Justice hee enjoyeth the chiefe and principal goodnesse. And yet the Law is not able to performe these things without the assistance of grace, without the which also you cannot learne nor cover either Lawe or vertue. For, as saith Pariss. in his book entituled *Cur Deus homo*, the inward vertue of man, wherin his desiring is placed, is so

through

through original sin defaced & corrupt, that it esteemeth vitious works for pleasant, & vertuous works for unpleasant. Wherefore, in that some men apply and endeavour themselves to the love & following of vertues, it proceedeth of the bountiful goodnes of God, & not of the power of man. Is there not then special cause why the laws, which being prevented, & accompanied with grace, do perform all the premises, should with all diligent travel be learned? Seeing that who so hath perfectly attained thereunto, the same shall enioy felicity, the end & performance, as the Philosophers say, of mans desire, by means whereof he shall in this life be blessed, in the

per peccatũ originale ita viciata est, ut sibi viciorũ suavia, & virtutum aspera opera sapiant. Quare, quod aliqui ad amorem sectarionémque virtutis confe-tum se unt, divinæ bonitatis beneficiũ est, & non humanæ virtutis. Num tunc leges quæ, preveniente & comitante gratia, omnia premissa operãtur, tota conamine addiscendæ sunt? dum felicitatẽ, quæ secũdum Philosophos, est hic finis & complementum humani desiderij, earum apprehensor, obtinebit, quo & beatus ille erit in hac vita,

ejus poſſidens ſummum bonum. Verè, etſi non hæc te moveant, qui regnum rectarus es, movebunt te & arctabunt ad diſciplinatum legis Prophetæ verba dicentis: *Erudimini, qui judicatis terram*: non enim ad eruditionem artis factivæ, aut mechanicæ, hic movet Propheta: Cum non dicat, Erudimini, qui colitis terram, nec ad eruditionem ſcientiæ tantum theoricæ, quamvis opportuna fuerit incolis terræ: quia generaliter non dicit, erudimini qui inhabitatis terram,

he now poſſeſſeth the chief goodnes therof. Doubtles if theſe things move you not, which ſhall have the rule and government of a kingdom, yet the wordes of the Prophet ſhall move you, yea, and force you to the ſtudie of the Lawe, which wordes bee theſe: Bee yee learned you that are Judges of the Earth: Heere the Prophet exhorteth not to the learning of a baſe art or a handicraft, for hee ſaith not: Be yee learned you that are the inhabiters of the Earth, nether doth hee counſell to the learning of knowledge ſpeculative, though it bee not unneceſſary for the inhabiters upon the earth: For hee ſayeth not generally: Be ye learned you that dwel upon the earth, but

but by theſe words doth the Prophet call Kinges only to the learning of the Law, wherby judgements are executed, forſomuch as hee ſpecially ſaith, be ye learned you that are Judges of the earth. And it followeth: leaſt the Lord ware angry, and ſo you periſh from the way of righteouſnes. Neither doth holy ſcripture (O Kings ſon) command you onely to be skilfully inſtructed in the Lawes, wherby you ſhall purchaſe and obtain the poſſeſſion of juſtice, but alſo in another place it biddeth you unfainedly to love Juſtice, where it ſaith: O ſet your love & affection upon Juſtice, you that are Judges of the Earth, in the firſt chapter of the booke of Wiſdome.

ted ſolùm ad diſciplinam legis, qua Judicia redduntur, Reges invitat Propheta in his verbis, Cum ſpecialiter ipſe dicat: *Erudimini, qui judicatis terram.* Et ſequitur: *Ne quando iraſcatur Dominus & pereatis de via juſta.* Nec ſolùm legibus, quibus juſtitiam conſequeris, (fili Regis) imbui te jubet ſacra Scriptura; ſed & ipſam juſtitiam deligere, tibi alibi præcipit, cum dicat: *Diligite Juſtitiam, qui judicatis terram*, Sapientiæ capitulo primo.

Chap. 5. *Ignorance of the Law causeth the contempt thereof.*

SEd quomodo justitiam diligere poteris, si non primó legum scientiam, quibus ipsa cognoscatur, utcunque apprehẽderis? Dicit namque Philosophus, quod nihil amatum nisi cognitum. Quare *Fabius* Orator ait, *Quod felices essent artes, si de illis soli artifices judicarent.* Ignotum vero non solum non amari, sed & sperni solet. Quo poeta quidam sic ait.

Omnia quæ nescit, dicit spernenda colonus.

But how can you love Justice, unlesse you first have a sufficient knowledge in the lawes, whereby the knowledge of it is won and had, for the Philosopher saith, that nothing can bee loved except it bee known. And therefore Quintilian the Oratour saith, That happy should Arts bee, if Artificers only were Judges of them. As for that which is unknowne, it is wont not onely not to bee loved, but also to be despised. And therefore a certain Poet thus saith.

The plowman doth despise and scoff.

The thing he is not skilful of.

And

And this is the saying not of Plowmen alone, but also of learned and right skilfull men. For if unto a naturall Philosopher, that never studied the Mathematicall sciences, a supernaturall philopher should say, that this Science considereth things severed from all matter and mooving, according to their substantiall being and reason: or the Mathematicall man should say that this Science considereth things ioyned to matter, and moving, after their substance, but severed according to reason: both these, though Philosophers, will the naturall Philosopher, which never understood things severed from matter and motion, either

Et non coloni solũ vox hæc est, sed & doctorũ peritissimorum quoq; virorũ. Nam si ad Philosophum naturalẽ qui in Mathemat. nunquam studit, metaphisicus dicat, quod sciẽtia sua cõsiderat res separatas ab omni materia & motu secundum esse & secundũ rationẽ: Vel Mathematicꝰ dicat, pro sua scientia considerat res cõjunctas materiæ, & motui, secundũ esse, sed separatas secũdũ rationẽ: ãbos hos, licet philosophos, philosophus ille naturalis qui nunquam novit res aliquas separatas a materia

eſſentia vel ratione ſpernet, eorumque ſcientias, licet ſua ſcientia nobiliores ipſe deridebit, non alia ductus cauſa, niſi quia eorum ſcientias ipſe penitus ignorat. Sic & tu, Princeps, leges Angliæ peritum miraberis, ſi dicat, quod frater fratri ſibi nequaquam uterino, non ſuccedet in hæriditate paterna, ſed potius hæreditas illa, ſorori integri ſanguinis ſui deſcendet, aut capitali domino fœdi accidet ut eſcaeta ſua: Cum cauſã legis hujus tu ignores, in lege tamẽ Angliæ doctũ, hujus caſus difficultas nul-

in being or in reaſon, vtterly deſpiſe, and their ſciences, though indeede more excellent then his, will be laugh to ſcorne, mooved ſo to doe by none other cauſe, but that he is altogether ignorant in their ſciences. Likewiſe you, moſt worthy Prince, would wonder at one ſkilfull in the Lawes of England if he ſhould ſay, that the brother ſhall not ſucceede his halfe brother in their Fathers inheritance, but rather his inheritance ſhall deſcend to the ſiſter of the whole bloud, or elſe it ſhall be intituled to the chiefe Lord of the fee as his eſcheat: Hereat you would much marvel, becauſe you know not the cauſe of this law, howbeit the difficultie of this caſe nothing

nothing troubleth him that is learned in the lawes of England. Wherfore it is a common saying, that an Art hath no foe but an ignorant person.

But God forbid, O noble Prince, that you should be an enemy to the Lawes of that Realme, which you shall by succession inherite: or that you should despise them, seeing that the aforecited text of scripture instructeth you to the love of Justice. Wherefore, most Soveraigne Prince, I doe with most earnest affection require you to learne the lawes of your Fathers Kingdome, whom you shall succeede, not only to the intent you may the rather avoyde these inconveniences, but also because mans

latenus perturbat. Quare & vulgariter dicitur: quod *ars non habet inimicum nisi ignorantem.*

Sed absit a te, *fili Regis*, ut inimiceris legibus Regni, quo tu succeſſurus es, vel ut eas spernas, quum justitiam diligere, præcipta sapientiæ lectio te erudiat. Iterum igitur atque iterum, *Princeps inclitiſſime*, te adiuro, ut leges Regni patris tui, cui succeſſurus es, addiscas. Nec dum ut inconvenientias has tu evites: Sed quia mens humana,

nat, quæ naturaliter bonum appetit, & nihil potest appetere, niſi ſub ratione boni, mox ut per doctrinam bonum apprehenderit, gaudet & illa delectatur, ac quanto deliceps illud plus recordatur, tanto amplius delectatur in eodem, quo docueris, quod ſi leges prædictas quas jam ignoras, intellexeris per doctrinam, cum optime illæ ſint, amabis eas. Et quanto plus eaſdem mente pertractaveris, delectabilius tu frueris.

Nam omne, quod amatur, uſu tra-

mind, ſuch naturally deſireth the thing that is good, & can deſire nothing but in reſpect that it is good, as ſoon as by learning it hath taken hold of that which is good, it becometh joyfull and loveth the ſame: & the more that it is afterward occupied in the remembrance of the ſame, ſomuch it is more delighted therein: Whereby you are taught that if you once by learning attain to the underſtanding of the aforeſaid laws, wherein you are now ignorant, ſeeing they be perfectly good, you muſt needs love them. And the more that you record them in your mind, ſo much the more delight and pleaſure ſhall you have in them. For whatſoever it is that is loved, the ſame draweth

eth the lover of it into the nature thereof. So that as the Philosopher saith use or exercise becometh another nature. So a slip of a pear tree being grafted into the stock of an Apple tree after that it hath taken, it so draweth the apple tree into the nature of the pear tree that they both for ever after are rightly called a pear tree, & do bring forth the fruit of a pear tree In like sort, continuall use and practise of vertue causeth a full perfection thereof, in so much that the practiser of the same is afterward named thereby: as a man indued with modesty, of the use thereof is named modest, He that useth continency is called continent, and one garnished with wisdom

hic amarorem suum in naturam ejus. Unde, ut dicit Philosophus, *usus altera fit natura*: sic ranunculus pyri, stipiti pomi insertus, postquam coaluerit, ita pomum trahit in naturam pyri, ut ambæ deinceps, merito pyrus appellentur, fructuique producant pyri. Sic & usitata virtus habitum generat, ut utens ea deinde a virtute illa denominetur, quo modestia præditus, usu modestus nominatur, continentiæ continens, & sapientiæ sapiens.

Quare

Quare & tu princeps, poſtquam juſtitia delectabiliter functus fueris, habitumque legis indutus fueris, merito denominaberis juſtus, cujus gratia tibi dicetur, *Dilexiſti juſtitiam, quo & odiſti iniquitatem, propterea unxit te dominus Deus tuus oleo lætitiæ præ conſortibus tuis regibus terræ.*

is called wiſe. Wherefore you alſo, moſt mightie Prince, when you are pleaſantly delited in Juſtice, and therewith indued, in reſpect of the perfection of the law you ſhall worthily be called Juſt. For which cauſe it ſhall be ſaid unto you: Thou haſt loved Juſtice and hated iniquitie, and therfore the Lord thy God hath annointed thee with the oyle of gladneſſe above the Kings of the Earth thy companions.

Chap. 6. ¶ Heere the Chancellour briefely repeateth the effect of all his perſwaſion.

Now

NOw, moſt gracious Prince, is not all this enough to moove your Highneſſe to the ſtudie of the Law? Seeing that thereby you ſhall indue your ſelfe with Juſtice, which ſhall yeelde unto you the name of a juſt man. And ſhall alſo eſchewe the infamie of ignorance in the Lawe. And further by the Lawe you enjoying felicitie, ſhall be bleſſed in this life. And finally being furniſhed with a loving feare which is the wiſdome of God, you ſhall obtaine and poſſeſſe Charitie, which is a ſtedfaſt love to God-warde, and by the meanes thereof, cleaving to God, you ſhall by the Apoſtles ſaying, Be made one Spirit with him.

NOnne tunc, *Princeps ſereniſſime*, hæc te ſatis concitant ad legis rudimenta? cum per ea juſtitiam induere vales: quo & appellaberis juſtus, ignorantiæ quoque legis evitare poteris ignominiam: ac per legem fœlicitate fruens, beatus eſſe poteris in hac vita, & demum filiali timore indutus, qui Dei ſapientia eſt, charitatem, quæ amor in deum eſt imperturbatus, conſequeris, qua Deo adhærens, per Apoſtoli ſententiam, *Fies unus ſpiritus cum eo.*

Sed

Sed quia iſta, ſine gratia lex operari nequit, tibi illam ſuper omnia implorare neceſſe eſt, legis quoque divinæ & ſanctarum ſcripturarum indagare ſcientiam.

Cum dicat ſcriptura ſacra, quod *vani ſunt omnes, in quibus non eſt ſcientia Dei*, Sapientiæ cap. xiii.

His igitur, *Princeps*, dum adoleſcentia es, & anima tua velut tabula raſa, depinge eam, ne in futurum ipſa figuris minoris frugi delectabilius depingatur.

Quia etiam (ut Sapiens quidam ait)

But forasmuch as the Law without grace cannot accomplish these things, it is necessary and requisite, that above all things you make earnest intercession for it: and also that you become a studious searcher of Gods law, and of the holy Scripture, For Scripture saith, that all men are vaine, in whom is not the knowledge of God, in the xiii chapter of the book of Wisdome. Wherefore, most noble Prince while you are yet young, & while your soule is as it were a smooth blanke table, write in it these things, least hereafter you happen to take pleasure in writing lessons of lesse profit therein. For as a certaine wise man saith:

Where-

Whereof the veſſell new, did firſt receive the taſt, Therein, when it is old, the ſent will ever laſt.

Quod nova teſta capit. Inveterata ſapit.

What handicrafts man doth ſo negligently regard the profit of his childe, whom whiles he is young, he will not ſee brought up in ſuch an occupation, as thereby he may afterward obtain to lead a merry life? So the Carpenter teacheth his ſon to cut with an axe: the ſmith to ſtrike with an hammer: & whom he intendeth to make a ſpiritual miniſter, him he procureth to be trained up in learning: So likewiſe is it conuenient, that a Kings ſon, which ſhall govern the people after his father, be in his youth inſtructed in the laws.

Quis Artifex tam negligens profectus ſuæ prolis eſt, ut non eam, dum pubeſcit, artibus inſtruat, quibus poſtea vitæ ſolatia naſciſcatur? Sic lignarius faber ſecare docet libro, ferrarius ferire malleo, filium inſtruit: & quem in ſpiritualibus miniſtrare cupit, literis imbui facit: Sic & principi, filium ſuum, qui poſt eum populum regulabit, legibus inſtrui, dum minor eſt convenit.

Quali-

Qualiter si fecerint Rectores orbis, mũdus iste ampliori, quam jam est, justitia regeretur; quibus si tu, ut jam hortor, facias, exemplum non minimum ministrabis.

Which order if the Rulers of the world would observe, then the world should be governed with much more Justice then now it is, Unto whom, if you will follow mine exhortation, you shall minister no small example.

¶ *Chap 7. Now the Prince yeeldeth himselfe to the studie of the Lawes, though he bee yet disquieted with certaine doubts.*

Silente ex tunc Cancellario, *Princeps* ipse sic exorsus est. Vicisti me, vir egregie, suavissima oratione tua, qua & animum meum

THus when the Chancellor had said, he held his peace, to whom the Prince began on this wise to speake. You have overcome mee, welbeloved Chancellour, with your most pleasant talke, wherwith you have inflamed my

my minde with a fervent desire towarde the knowledge of the Lawe. Howbeit two things there bee, that doe tosse my minde too and fro, and so disquiet it, that like a Shippe in the raging waves it knoweth not which way to encline for ease. The one is, while it considereth how many yeeres the students of the lawes bestowe therein before they can attaine to sufficient knowledge of the same: Which causeth my minde also to dread, least that I should likewise spend the yeares of my youth. The other is, whether I shall apply my selfe to the studie of the Lawes of England, or of the Ci-

ardore non minimo, legis feciſti ſitire documenta. Sed tamen duobus, me huc illucque agitantibus, animus ipſe affligitur: ut tanquam in turbido mari Cimba, neſciat quorſum dirigere proras. Unũ eſt, dum recolit quot annorum curriculis leges addiſcentes, earum ſtudio ſe conferunt, antequam ſufficientem earundem peritiam nanciſcantur: quo timet animus ipſe ne conſimiliter ego præteream annos juventutis meæ. Alterum eſt, an Angliæ Legum vel Ci-

vilium, quæ per orbem precelebres ſunt, ſtudio operam dabo. Nam non niſi optimis legibus populum regere licet, etiam ut dicit Philoſophus, *Natura deprecatur optima*, Quare libenter ſuper his, quod tu conſulis, auſcultaremus. Cui Cancellarius. Non ſunt hæc, *fili Reges*, tantis celata myſteriis, ut deliberatione egeant ingenti, quare, quid in his mihi viſum eſt prodere, non differemus.

vile laws, which throughout the whole World are chiefely eſteemed: For people may not bee governed but by right good Lawes, and as the Philoſopher ſaith, nature coveteth that which is beſt. Wherefore I would gladly heare your counſell in this behalfe. To whom the Chancellour made this anſwer. Theſe matters, O Kings Sonne, are not hidde under ſo deepe and darke myſteries, that they require any great deliberation, or adviſement. And therefore what I thinke beſt herein I will not hyde.

Chap. 8. So much knowledge of the Law as is neceſſarie for a Prince is ſoon had.

Ariſtotle

ARistotle in the first Booke of his naturall Philosophie saith, that then we suppose our selves to have the knowledge of every thing, when we know the causes and beginnings thereof even to the principles, upon the which text the Commentatour saith, that the Philosopher by beginnings or principles did understand the causes efficient, by the terme Causes he understood causes finall, and by Elements, matter and forme. But in the Lawe there are not matter and forme, as in things naturall and compound. How bee it there be in them certaine Elements, out of the which they proceede as out of

PHilosophus in primo Phisicorum dicit, quod *Tunc unumquodque scire arbitramur, cum causas & principia ejus cognoscamus usque ad elementa.* Super quem textum commentator dicet, quod Aristoteles per principia intellexit causas efficientes, per causas intellexit causas finales, & per Elementa materiam & formam. In Legibus vero non sunt materia & forma, ut in Phisicis & compositis. Sed tamen sunt in eis Elementa quædam, unde ipsæ profluunt, ut ex

materia & forma, quæ ſunt *conſuetudines, ſtatuta, & jus naturæ*, ex quibus ſunt omnia jura regni, ut ex materia & forma ſunt quæque naturalia: & ut ex literis, quæ etiam elementa appellantur, ſunt omnia quæ leguntur. *Principia* autem, quæ Commentator dicit eſſe cauſas efficientes, ſunt quædam univerſalia, quæ in legibus Angliæ docti, ſimiliter & Mathematici, *Maximas* vocant: Rethorici, Paradoxas: & Civileſtæ, Regulas juris denominant. Ipſa revera non

matter and forme, theſe are cuſtomes, ſtatutes, and the Law of nature, of the which all the lawes of the Realme haue their beginning, eben as all naturall things haue of matter and forme, and as all things that are written and read do conſiſt of letters, which alſo are called elements. But principles, or beginnings, which are as the Commentarie ſaith, cauſes efficient, they are certaine univerſal propoſitions, which they, that be learned in the Lawes of England, and likewiſe the Mathematicals do terme Maximes: the Rhethoriciens doe call the ſame Paradoxes: and the Civilians terme them rules of the law. Theſe indeede cannot be proued by force o

ar gu

arguments, or by demonſtrations Logicall: But as it is ſaid in the ſecond booke of Poſteriorum, they are known by induction, by the way of ſenſe and memory. Wherefore in the firſt booke of his naturall Philoſophy, Ariſtotle ſaith, that principles are not made of others, nor one of them of another, but all other bee made of them, And according thereunto in the firſt booke of his Topikes he writeth, that every principle is a ſufficient proofe of it ſelf. And therefore the Philoſopher ſaith, that ſuch as deny them, ought not to be diſputed or reaſoned withall: becauſe that as he writeth in the firſt booke

argumentorum vi, aut demonſtrationibus logicis dignoſcuntur: Sed ut ſecundo *Poſteriorum* docetur, inductione, via ſenſus & memoriæ, adipiſcuntur. Quare & primo Phiſicorum phyloſophus dicit, quod *principia non fiunt ex aliis, neque ex alterutris, ſed ex illis alia fiunt*, quo primo Topicorū ſcribitur, quod *unumquodque principiorum eſt ſibi ipſi fides*. Unde, *cum negantibus ea*, dicit Phyloſophus, *non eſt diſputandum*: quia, ut ſcribi-

tur vi. Ethicorum, *ad principia non est ratio.* Igitur principiis imbuendi sunt, quiqui gliscunt aliquas intelligere facultates. Ex eis etenim, revelantur causæ finales, ad quas, rationis ductu, per principiorum agnitionem, pervenitur; unde, his tribus, videlicet, *Principiis, Causis, & Elementis ignoratis, scientia, de qua ipsa sunt, penitus ignoratur.* Et his cognitis, etiam scientiam illam cognitam esse, non determinate, sed in confuso &

of his Moral philosophie, there is no reason to be given for principles. Wherefore whatsoeuer they bee that couet to profit in the knowledge of any faculties, they must needs first be furnished with principles. For by them are opened the causes final, unto the which by that direction of reason, through the knowledge of the principles, we do attain, wherefore these three, viz. Principles, Causes, and Elements, being unknown, the science, whereof they are, is altogether unknowen. And the same three being known, the science also, whereof they are, is thought to be knowne, not determinately or precisely, but superficially after

after a confuſe & univer ſall ſort.

Thus we thinke our ſelves to have the knowledge of Gods Lawes, when wee underſtand our ſelves to know faith, charitie, and hope, and alſo the Sacraments of the Church, and the Commandementes of GOD, leaving to the Prelates of the Church the other myſteries of Theologie. Wherefore the LORD ſaith unto his Diſciples: To you it is given to knowe the myſtery of the kingdome of GOD, but to others in Parables, that ſeeing they may not ſee, &c. And the Apoſtle ſaith, Not to bee wiſer, then it behooveth. And in an other place,

univerſaliter arbitratur.

Sic Legem divinam non noſſe indicamus, dum fidem, charitatem, & ſpem, ſacramenta quoque Eccleſiæ ac Dei mandata, nos intelligere ſentiamus; cætera Theologiæ myſteria Eccleſiæ præſidentibus relinquentes. Quare dominus diſcipulis ſuis ait: *Vobis datum eſſe noſſe myſterium regni Dei, cæteris autem in parabolis, ut videntes non videant, &c.* Et Apoſtolus dixit, *non plus ſapere quam oportet ſapere.* Et alibi,

non alta ſapientes. Sic & tibi, *Princeps*, neceſſe non erit miſteria legis Angliæ longo diſciplinatu rimare, ſufficiet tibi, ut in Grammatica tu profeciſti, etiam & in legibus proficias. Grammaticæ vero perfectionem, quæ ex *Ethimologia*, *Ortographia*, *Proſodia*, & *Syntaxi*, quaſi ex quatuor fontibus profluit, non ſpecie tenus induiſti, & tamen grammatica ſufficienter eruditus es, ita ut merito grãmaticus denomineris. Conſimiliter quoq; denominari legiſta mereberis, ſi legum principia

Not being high in wiſedome. In like manner, O moſt worthy Prince, it ſhall not bee needfull for you with long ſtudies to ſearch out the ſecret myſteries of the Law of England, It ſhall ſuffice for you, as you have profited in grammer, ſo alſo to profit in Law, Unto the perfection of Grammer, ſpringing out of Etimologie, Orthographie, Proſodie, and Conſtruction, as out of foure fountaines, you have not exactly attained, and yet you are ſo ſufficiently grounded in grammer, that you may well bee called a Grammarian. Likewiſe ſhall you bee well worthie to be called a Lawyer, if you ſearch out the principles

and

and cauſes of the Lawes, even to the elements, after the manner of a ſcholar or a learner. For it ſhall not be needfull or expedient for you by the travell of your own wit, to ſtudie out the hid myſteries of the Law. But let that geare be left to your Judges and men of Law, which in the Realme of England are called Serjeants at Law, and to other profeſſors of the law commonly called Apprentices: For you ſhall better execute judgments by others, then by your ſelfe: Neither hath it been ſeen that any King of England hath pronounced judgement with his own mouth. And yet nevertheleſſe the judgments of the Realme are his, though

& cauſas, uſq; ad elementa, diſcipuli more indagaveris. Non enim expediet tibi, propria ſenſus indagine, legis ſacramenta rimare, ſed relinquātur illa judicibus tuis & advocatis, qui in regno Angliæ ſervientes ad legem appellantur ſimiliter & aliis peritis, *quos Apprenticios* vulgus denominat: melius enim per alios, quam per teipſum judicia reddes, quo, *proprio ore*, *nullus regum Angliæ* judicium proferre uſus eſt, & tamen ſua ſunt omnia judicia regni licet per alios ipſa

ſa reddãtur, ſicut & *Judicum omnium ſententias, Joſaphat aſſervit eſſe judicia dei.* Quare, *tu Princeps ſereniſſime*, parvo tẽpore, parva induſtria, ſufficienter eris in legibus regni Angliæ eruditus, dummodo ad ejus apprehenſionem tu cõferas animũ tuũ. Dicit namq; *Seneca* in epiſtola ad *Lucillum*: *Nil eſt quod pertinax opera, & diligens cura, non expugnat.* Noſco namque ingenii tui perſpicacitatem, quo audacter pronuncio, quod in legibus illis, licet earũ peritia qualis judicibus neceſſaria eſt, vix, xx.

by other they bee uttered and pronounced, Like as alſo King Joſaphat affirmed the ſentences of all the Judges to be the judgments of God. Wherfore, moſt gracious Prince, you ſhall in ſhort time with little labour bee ſufficiently learned in the Lawes of England, ſo that you doe apply your minde to the obtaining thereof. For Seneca in an Epiſtle to Lucillus, ſaith: There is nothing which earneſt travell and diligent care atchieveth not. And ſo well do I know the prompt towardneſſe of your nature, that I dare bee bolde to ſay, that in thoſe Lawes (though the exact knowledge of them ſuch as is required in judges

ges can ſcant bee gotten in the ſpace of xx. yeeres) you ſhal ſufficiently in one yeer attain to ſo much underſtanding as is conuenient for a Prince. Nether in the meane time ſhall you neglect and omit the ſtudy of martiall diſcipline, whereunto you are ſo fervently given, but during all the ſame yeer in ſtead of recreation you ſhall uſe the practiſe thereof at your pleaſure.

annorum lucubrationibus acquiratur, tu doctrinam Principi congruam in anno uno ſufficienter nanciſceris, nec interim militarem diſciplinam, ad quam tam ardenter anhelas, negliges, ſed ea, recreationis loco, etiam anno illo, tu ad libitum perfrueris.

Chap. 9. A King, whoſe Government is politike cannot change the Lawe of his Realme.

The ſecond point, moſt worthie Prince, wherof you ſtand in feare, ſhall in like manner, & as eaſily as the other, be confuted. For you ſtand in doubt,

Secundum vero, *Princeps*, quod tu formidas, conſimili nec majori opera elidetur. Dubitas nempe, an Anglorum

glorum legũm, vel civilium ſtudio te conferas, dum civiles ſupra humanas cunctas leges aliar, fama per orbem exſtollat glorioſa. Nõ te conturbet, *fili Regis*, hæc mentis evagatio: Nam non poteſt rex Angliæ, ad libitum ſuum, leges mutare regni ſui. Principatu namq; nedum *regali*, ſed & *politico*, ipſe ſuo populo dominatur. Si regali tantum ipſe præeſſet eis, Leges regni ſui mutare ille poſſet, *Tallagia* quoque & cætera onera eis imponere ipſis inconſultis, quale dominiũ denotant leges

whether it bee better for you, to give your mind to the ſtudie of the Lawes of England, or of the Civile lawes, becauſe they thorowout the whole world are advanced in glory and renowne above all other mans lawes. Let not this ſcruple of minde trouble you, O moſt noble Prince: For the King of England cannot alter nor change the lawes of his Realme at his pleaſure. For why hee governeth his people by power, not only royall, but alſo politique. If his power ober them were royal only, then he might change the Lawes of his realm & charge his ſubjects with Tallage & other burdens without their conſent, & ſuch is the dominion that the civill Law purporte,

when

when they ſay, The Prince his pleaſure hath the force of a Law. But from this, much differeth the power of a King, whoſe government over his people is politique. For he can neither change Lawes without the conſent of his ſubjects, nor yet charge them with ſtrange impoſitions againſt their wils. Wherefore his people do frankly and freely enjoy and occupy their own goods, being ruled by ſuch lawes as they themſelves deſire. Neither are they pilled either of their own king or of any other. Like pleaſure alſo & freedom have the ſubjects of a king ruling only by power royal, ſo long as he falleth not into tyranny. Of ſuch a King ſpeaketh Ari-

civiles, cum dicant *qd principi placuit, legis habet vigorem.* Sed longe aliter poteſt Rex, politice in perſas genti ſuæ, quia nec leges ipſe ſine ſubditorum aſſenſu mutare poterit, nec ſubjectum populum retinentē onerare impoſitionibus peregrinis, cuire populus ejus libere fruetur bonis ſuis, legibus, quas cupit regulatus, nec per Regem ſuum, aut quemvis alium depilatur, conſimiliter tamen plaudit populus, ſub Rege regaliter tantum principante, dummodo ipſe in tyrannidem non labatur.

De

De quali rege dicit philoſophus iij. politicorū, quod *melius eſt Civitatem regi viro optimo, quam lege optima.* Sed quia non ſemper contingit præſidentē populo, huiuſmodi eſſe virum, *ſanctus Thomas* in libro, quem Regi Cipri ſcripſit, *de regimine principum*, optare cenſetur, regnum ſic inſtitui, ut rex non libere valeat populum tyrannide gubernare, quod ſolum fit dum poteſtas Regia lege politica cohibetur: Gaude igitur, *princeps optime*, talem eſſe legem regni in quo tu ſucceſſurus

totle in the third Book of his Civill Philoſophie, ſaying, that it is better for a Citie to bee governed by a good King, then by a good Lawe. But forasmuch as a King is not ever ſuch a man, therefore Saint Thomas in the Booke, which hee wrote to the King of Cyprus, Of the governance of Princes, wisheth the ſtate of a Realme to be ſuch, that it may not bee in the kings power to oppreſſe his people with tyranny, Which thing is perfourmed onely, while the power Royall is reſtrained by power politique. Reioyce therefore, O ſoveraign Prince, and be glad, that the Lawe of your Realm, wherein you ſhall ſucceed, is ſuch,

For

For it shall exhibite and minister to you and your people no small securitie and comfort. With such Lawes as saith the same S. Thomas should all mankind have been governed, if in Paradise they had not transgressed Gods commandement, with such Lawes also was the Synagogue ruled, whyle it served under God only as King, who adopted the same to him for a peculiar kingdome, But at the last, when at their request they had a man King set over them, they were then under royall Lawes onely brought very low, And yet under the same Lawes, whyle good Kings were their Rulers: they lived wealthily, and when wilfull and ty-

es, quia, & tibi, & populo, ipsa securitatem prestabit non minimã & solamen. Tali lege, ut dicit idem *sanctus*, regulatũ fuisse totũ genus humanum, si in paradiso Dei mandatũ non præterijsset tali etiã lege regebatur Sinagoga, dum sub solo Deo, Rege, qui, eam in regnum peculiare adoptabat, illa militabat, sed demum ejus petitione, rege homine sibi constituto, sub lege tantum legali ipsa deinceps humiliata est. Sub qua tamen, dum optimi Reges sibi præfuerunt, ipsa plausit, & dum

discoli

diſcoli ei præſidebant, ipſa incõſolabiliter lugebat, ut regum liber hæc diſtinctius manifeſtavit. Tamen quia de materia iſta inopuſculo, quod tuĩ contemplatione de *natura legis naturæ* exaravi, ſufficienter puto me deſcripſiſſe, plus inde loqui jam deſiſto.

rannous Kings had the government of them, then they continued in great diſcomfort and miſery, as the book of Kings doth more plainly declare. But for ſo much, as I ſuppoſe, I have ſufficiently debated this matter in my work which at your requeſt I compiled of the nature of the law of nature, therfore at this time I surceaſe to ſpeak thereof any more.

Chap. 10. *Here the Prince demandeth a queſtion.*

TUnc *princeps* ilico ſic ait. Unde hoc Cancellarie, *quod Rex unus plebem ſuam regaliter tantum regere valeat, & regi alteri poteſtas hujuſmodi denegatur*, æqualis faſtigij cum ſint Reges

IMmediately the Prince thus ſaid. How cometh this to paſs, good Chancellour, that one King may govern his people by power Royall onely, and that another king can have no ſuch power, ſeeing both theſe Kings are in dignity equall,

I

I cannot choose but much muse and marvelle why in power they should thus differ.

ambo, cur in potestate sint ipsi dispares nequeo non admirari.

Chap. 11. *The answer to this question is here omitted, for that in another work it is handled at large.*

I Have sufficiently, quod the Chancellor, declared in my foresaid worke, that the King, whose government is politike, is of no lesse power, then he that royally ruleth his people after his owne pleasure, howbeit they differ in authority over their subjects, as in the same worke I have shewed, and say I still. Of which difference I will open unto you the cause as I can.

CAncellarius. Non minoris esse potestatis, regē politicè imperantem, quā qui, ut vult, regaliter regit populū suum, in supradicto opusculo sufficiēter est ostēsum, diversę tamē auctoritatis eos in subditos suos ibidē ut jā nullaten⁹ denegavi, cujus diversitatis causam, ut potero, tibi pādam.

Chap. 12. *How Kingdomes ruled by royall Government only first began.*

MEn in times passed, excelling in power,

HOmines quondam, potentia

præpollentes, a vidi dignitates & gloriæ, vicinas ſæpe gentes ſibi viribꝰ ſubjugarunt, ac ipſis ſervire obtemperare quoq; juſſionibus ſuis cõpulerũt, quas juſſiones ex tunc leges hominibꝰ illis eſſe ipſi ſancierũt. Quarum perpetione diutina, ſubjectus ſic populus, dũ per ſubijciẽtes à cæterorũ injurijs defẽdebatur, in ſubijciẽtium dominiũ conſentierunt: Oportunius eſſe arbitrãtes, ſe uniꝰ ſubdi imperio, quo erga alios defenderẽtur quam omnium eos infeſtare volentium oppreſſionibus exponi. Sic q; regna

greedy of dignity & glory, did many times by plain force ſubdue unto them their neighbors the nations adjoyning: & compelled them to do them ſervice & to obey their commandments, which commandments, afterward they decreed to be unto thoſe people very laws. And by long ſufferance of the ſame, the people ſo ſubdued, being by their ſubduers defended from the injuries of other, agreed & conſented to live under the dominion of the ſame, their ſubduers thinking it better for them to be under the empire of one man, which might be able to defend them againſt other, then to be in danger to be oppreſſed of all ſuch as would violently offer them any wrong.

And

And thus certain kingdoms were begun, And those subduers thus ruling the people unto them subdued, took upon them of ruling to be called rulers, which our language termeth kings, And their rule or dominion was named onely royall or kingly. So Nemroth was the first that got unto himself a Kingdom, And yet in the holy Scriptures he is not called a King, but a stout and mighty hunter before the Lord: For like as a Hunter subdueth wilde beasts living at their liberty: so did he bring men under his obedience. So did Belus subdue the Assyrians, & Ninus the most part of Asia. So also did the Romans usurpe the Empire of the

quædam inchoata sunt, & subjicientes illi, dum subjectum populum sic rexerunt, *a regendo sibi nomen regis usurparunt*, eorum quoq; dominatus tantum *regalis* dictus est. Sic *Nēbroth* primus sibi regnum comparavit, tamen non rex, ipse, sed *Robustus venator coram domino* sacris litteris appellatus est: Quia ut venator feras libertate fruētes, ipse homines sibi compescuit obedire. Sic *Belus Assyrias*: & *Ninus* quam magnam *Asiæ* partem, ditioni suæ subegerunt. Sic & *Romani* orbis imperium

uſurparunt qualiter fere in omnibus gẽtibus regna inchoata ſunt Quare, dum filij Iſrael regẽ poſtulabant, ſicut tunc habuerunt omnes gentes, dominus inde offenſus, legem *regalẽ* eis per Prophetam explanari mandavit. Quæ non aliud fuit, quam placitum regis eis præeſſentis, ut in primo Regum libro plenius edoceretur. Habes nunc (ni fallor) *Princeps chariſſime*, formã exordij regnorũ, regaliter poſſeſſorum. Quare, quomodo regnum *politice* regulatum, primitus erupit, etiam jam propulare

whole world, and thus almoſt were the kingdoms of all nations begunne. Wherefore the Lord being diſpleſed with the children of Iſrael requiring to have a king as then all other nations had, commanded the law regal to bee declared unto them by the Prophet. Which law regal was no other thing but the pleaſure of the king their governor, as in the 1. book of kings more fully it is contained. Now you underſtand, as I ſuppoſe, moſt noble Prince, the form & faſhion of the beginning of thoſe kingdoms, that be regally poſſeſſed & ruled. Wherefore, now I will aſſay to make plain to you how and by what means the government of the kingdom politique, took his firſt entrance

entrance and beginning, to the end & intent, that when you know the beginnings of them both, it may bee right easie for you thereby to discerne the cause of the diversitie, which in your question is conteined.

conabor, ut cognitis amborum regnorum initiis, causam diversitatis, quam tu quæris, inde elicere tibi facillium sit.

Chap. 13. *How Kingdomes of politique governance were first begun.*

SAint Augustine in the xxiii. chapter of his xix. booke de Civitate Dei, saith, That a people is a multitude of men associated by the consent of law, and communion of wealth. And yet such a people being headlesse, that is to say, without a head, is not worthy to bee called a body. For as in things naturall, when the head is cut off, the residue is not called a bo-

S*Anctus Augustinus* in libro xix. *de Civitate Dei, cap.* xxiii. dicit, Quod *populus est cœtus hominum, juris consensu & utilitatis communione sociatus.* Nec tamē populus hujusmodi dux acephalus(i) sine capite, esse corpus vocari meretur. Quia ut in *naturalibus*, capite detrūcato, residuū non cor-

pus, ſed truncum appellamus, ſic & in *politicis*, ſine capite communitas nullatenus corporatur: Quo primo polit. dicit. *Philoſophus*, quod *quandocunque ex pluribus conſtituitur unum inter illa, unum erit regens, & alia erũt recta*, Quare populum ſe in regũ aliunde corpus *politicum* erigere volentẽ, ſemper oportet unum præficere totius corporis illius regitiuum, quem *Regem* nominare ſolitũ eſt. Hoc ordine, ſicut ex embrione corpus ſurgit phiſicum, uno capite regulatum, ſic ex populo erũpit reg-

die but a truncheon, ſo likewiſe in things *politique*, a communaltie without a head is in no wiſe corporate: Wherefore, Ariſtotle in the firſt book of his civill philoſophy ſaith, that whenſoever one is made of many, among the ſame, one ſhall be the ruler, and the other ſhall be ruled, wherefore a people that will raiſe themſelves into a kingdom, or into any other bodie politique, muſt ever appoint one to be chief ruler of the whole bodie, which in kingdoms is calleḍ a King. And this kinde of order, as out of the embrion riſeth a body naturall, ruled by one head, even ſo of a multitude of people ariſeth

a

a kingdome, which is a body mysticall, grounded by one man as by an head. And like as in a naturall body, as saith the Philosopher, the heart is the first that liveth, having within it blood, which it distributeth among all the other members, whereby they are quickened and do live, semblably in a body politique, the intent of the people is the first lively thing, having within it blood, that is to say, politique prouision for the utility and wealth of the same people, which it dealeth forth and imparteth aswell to the head as to all the members of the same body, whereby the body is nourished & maintained. Furthermore the law unnum, quod corpus extat mysticum uno homine ut capite gubernatum. Et sicut in naturali corpore, ut dicit Philosophus, cor est primũ vivens, habens in se sanguinẽ, quẽ emittit in omnia ejus membra, unde illa vegetãtur & vivunt: sic in corpore politico intẽsio populi primum vividum est, habens in se sanguinem, viz. prouisionẽ politicam utilitati populi illius, quã in caput & in omnia membra ejusdem corporis, ipsa transmittit, quo corpus illud alitur & vegetatur. Lex vero sub qua

cętus hominum, populus efficitur, nervorũ corporis phisici tenet rationem: Quia sicut per nervos compago corporis solidatur, sic per legem, quę à *ligando* dicitur, corpus hujusmodi misticũ ligatur, & servatur in unũ, & ejusdẽ corporis mẽbra ac ossa, quę veritatis qua cõmunitas illa sustẽtatur, soliditatẽ denotant, per legẽ, ut corpus naturale per nervos propria, retinent jura: Et ut nõ potest caput corporis phisici, nervos suos cõmutare, neque mẽbris suis proprias vires, & propria sanguinis alider the wch a multitude of men is made a people, representeth the semblance of sinews in the body natural: because that like as by sinews the joyning of the body is made sound, so by the law, which taketh the name à ligãdo, that is to wit, of binding such a mistical body is knit and preserved together: & the members and bones of the same body, wherby is represented the soundness of the wealth, wherby that body is sustained, do by the laws, as the natural body by sinewes, retein ebery one their proper functions: And as the head of a body natural cannot change his sinews, nor cannot deny or withhold from his inferior members their peculiar powers, & seberall nourishments of blod,

blood, no more can a King, which is the head of a bodie politike, change the Lawes of that body, nor withdraw from the same people their proper substance against their wills and consents in that behalfe. Now you understand, most noble Prince, the forme of institution of a kingdome politique, whereby you may measure the power, which the king thereof may exercise over the Law and subjects of the same. For such a king is made and ordained for the defence of the Law of his subjects & of their bodies, and goods, whereunto he receiveth power of his people, so that he cannot governe his people by any other power. Where-

mẽta denegare, nec rex, qui caput corporis politici est, mutare potest leges corporis illius, nec ejusdẽ populi substãtias proprias subtrahere, reclamantibus eis aut invitis. Habes ex hoc jam, *princeps*, instituti omnis *politici* regni formã, ex qua metiri poteris potestatẽ, quã Rex ejus in leges ipsius, aut subditos valeat exercere. Ad tutelã nãq; legis subditorũ, ac eorũ corporũ, & bonorũ, rex hujusmodi erectus est, & ad hãc, potestatẽ a populo effluxã ipse habet, quo ei non licet potestate alia suo popu-

populo dominari: quare ut poſtulationi tuæ, qua certiorari cupis, unde hoc pervenit qd poteſtates regũ tã diverſimode variantur ſuccinctius ſatisfaciã. Firme cõjector, qd diverſitates inſtitutionũ dignitatũ illarũ, quas propalavi, predictã diſcrepantiã ſolũmodo operantur, pront rationis diſcurſu, tu ex præmiſſis poteris exhaurire. Sic namq; Regnum *Angliæ*, qd ex *Bruti* comitiva *Trojanorũ*, quã ex *Italiæ* & *Græcorum* finibus produxit, in dominiũ *politicũ*, & *regale*, prorupit: Sic *& Scotia, quæ ei quondam ut*

foze to ſatisfie your requeſt, in that you deſire to be certified how it cometh to paſs that in the powers of Kings there is ſo great diverſity: Surely in mine opinion the diverſity of the inſtitutions or firſt ordinances of thoſe dignities, which I have now declared, is the onely cauſe of this forſaid difference, as of the premiſes by the diſcourſe of reaſon you may eaſily gather. For thus the Kingdom of England out of Brutes retinue of the Trojanes, which hee brought out of the Coaſts of Italie and Greece, firſt grew to a politique and regall dominion, Thus alſo Scotland, which ſometime was ſubject to England

England as a Dukedome thereof, was advanced to a politique and royall Kingdome. **Many other kingdomes also had thus their first beginning not onely of regall but also of politique government.** Wherefore Diodorus Siculus in his second booke of old historie. thus writeth of the Egyptians: **The Egyptian kings lived first, not after the licentious manner of other rulers, whose will and pleasure is in steade of law, but they kept themselves as private persons in subjection of the laws, And this did they willingly**, being perswaded that by obeying the laws they should bee blessed. **For of such rulers, as followed their owne lustes,**

ducat' obedivit, in regnū crevit politicum & regale. Alia quoq; plurima regna, nedū regaliter sed & politice regulari, tali originejus sortita sunt. Unde *Diodorus Siculus* in secundo libro *historiarū priscarum* de *Egyptiis*, sic scribit: suam primum *Egyptii* reges vitam non aliorum regnantium, quibus voluntas pro lege est, traducebant licentia, sed veluti privati tenebantur legibus, neque id egre ferebant, *existimantes parendo legibus, se beatos fore.* Nam ab his, qui suis indulgerent cupiditatibus multa

multa cenſebant fieri, quibus dampna periculaq; ſubirent. Et in quarto libro ſic ſcribit: Aſſumptus in Regem *Ethiopum*, vitam duxit ſtatutam legib⁹ omniaque agit juxta patrios mores, neque premio, neque pena afficiens quenquam, præter pertraditam a ſuperioribus legem. Conſimiliter loquitur de rege *Saba in fœlici Arabia*, & aliis quibuſdam regibus qui priſcis temporibus feliciter regnabant.

they ſuppoſed many things to be done, whereby they were brought in danger of divers harms & perils. And in his fourth Booke thus he writeth: The Ethiopian king as ſoone as he is created, hee ordereth his life according to the lawes, & doth all things after the maner & cuſtome of his country, aſſigning neither reward nor punishment to any man, other then the law made by his predeceſſours appointeth. Hee reporteth likewiſe of the king of Saba in Arabia the happy, & of certain other kings which in old time honorably reigned.

Chap. 14. *Here the Prince compendiouſly abridgeth all that the Chancellor afore hath diſcourſed at large.*

CUi *Princeps*, Effugaſti, Can-

TO whom the Prince thus anſwered. You have

have, good Chancellour, with the clear light of your declaration quite driven away the cloudy mist, wherwith the brightnes of my mind was darkned: so that I do most evidently see that no nation did ever of their own voluntary mind incorporate themselves into a kingdom for any other intent, but only to the end, that thereby they might with more safety then before maintain themselves, & enjoy their goods from such misfortunes & losses as they stood in fear of, And of this intent should such a nation be utterly defrauded, if then their king might spoyle them of their goods, which before was lawfull for no man to do. And yet should such a people be much more injured,

cellarie, declarationis tuæ lumine tenebras, quibus obducta erat acies mētis meæ, quo clarissime jam conspicio, quod non alio pacto gens aliqua, proprio arbitrio, unquam se in regnum corporavit, nisi ut per hoc, se & sua, quorum dispendia formidabant, tutius quam antea possiderent, quasi proposito gēs hujusmodi fraudaretur, si exinde facultates eorum eripere posset Rex suus, quod antea facere nulli hominum nō licebat. Et adhuc gravib⁹ multo populus talis læderetur,

si

ſi deinde peregrinis legibus, etiam ipſis forſan exoſis, regerentur. Et maxime, ſi legibus illis, eorum minoraretur ſubſtantia, pro cujus vitanda jactura, ut pro ſuorum tutela corporum, ipſi ſe Regis imperio, arbitrio proprio, ſubmiſerunt, non potuit revera poteſtas hujuſmodi ab ipſis erupiſſe: & tamen ſi non ab ipſis, Rex hujuſmodi ſuper ipſos nullam obtineret poteſtatem. E regione, aliter eſſe concipio de regno, quod Regis ſolum auctoritate & potentia incorporatum eſt,

if they ſhould afterward bee governed by ſtrange and ſtrange Lawes, yea, and ſuch as they peradventure deadly hated and abhorred. And moſt of all, if by thoſe Lawes, their ſubſtance ſhould bee diminiſhed, for the ſafegard whereof, as alſo for the defence of their own bodies, they of their own free will ſubmitted themſelves to the governance of a King, no ſuch power ſurely could have proceeded from them: And yet if they had not been, ſuch a King could have had no power ober them: Now on the other ſide I perceive it to ſtand much otherwiſe with a kingdom, which onely by the authoritie of a king is incorporate,

For

For such a Nation is no otherwise subject unto him, but that the same Nation which by his pleasure is made his Kingdome, should obey his Lawes, and bee ruled by the same, being nothing else but his like pleasure. Neither have I yet, good Chancellour, forgotten that, which in your treatise of the nature of the law of nature, you have with pithie reasons clarkly proved: concerning that the power of these two Kings is equal. Howbeit the power of the one, whereby he is at liberty to deal wrongfully, is not by such liberty augmented and increased, as to be of habilitie to decay and dy, is no habilitie, but in respect of the privation

qui non alio pacto gẽs talis ei subjecta est, nisi ut ejus legibus quæ sunt illius placita, gens ipsa, quæ eodem placito regnum ejus effecta est, obtemperaret & regeretur. Neque, Cancellarie, a mea hujusque memoria elapsum est, quod alias in tractatu de natura legis naturæ horum duorũ regũ æqualem esse potẽtiam, doctis rationibus ostendisti, dum potestas qua eorum alter perperã agere libereſt, libertate hujusmodi nõ augetur, ut posse lãgueſcere, morive, potentia nõ est, sed propter privationes in adjecto, impo-

mpotentia potius denominandum. Quia ut dicit Boetius, *potentia non eſt niſi ad bonum*, quod poſſe male agere, ut poteſt Rex regaliter regnans, liberius quam Rex politice dominans populo ſuo, potius ejus poteſtatem minuit, quam augmentat. Nam ſancti ſpiritus, jam confirmati in gloria, qui peccare nequeunt potentiores nobis ſunt, qui ut omne facinus liberis gaudemus habenis. Solum igitur mihi jam ſupereſt a te ſciſcitandum, *ſi Lex Anglie*,

and feeblenes in the thing, it is rather to be calleꝺ a Diſhabilitie. Becauſe that as Boetius ſaith, hability and power is not but to good: So that to bee of habilitie or power to doe evill, (as is the King that Regally doth rule, and that with much more liberte, then the King that hath a politike dominion over his people) is rather a diminution then an increaſe of power. For the holy ſpirits, which are now eſtabliſhed in glorie, and cannot ſinne, do in power far excell and paſſe us which have a delight & pleaſure to run headlong into all kinde of wickednes. Now therfore I have but this one only queſtion to demande of you, whether the law of England,

to

to the ſtudy whereof you exhort me, be as good and effectuall for the government of that kingdom, as the Civill law, whereby the holy empire is governed, is thought ſufficient for the government of the whole world? If with ſound reaſons & apparent demonſtrations you reſolve me in this point, I will ſtraight yield me to the ſtudy of the Laws, without further troubling you with my queſtions in this matter.

ad cujus diſciplinatum me provocas, *bona & efficax eſt ad regimen regni illius, ut lex civilis, qua ſacrum regulatur imperium, ſufficiens arbitratur ad orbis regimen univerſi*? Si me in hoc, demonſtrationibus congruis, indubium reddideris, ad ſtudium legis illius illico me cõferã nec te poſtulationib⁹ meis ſuper his, amplius fatigabo.

Chap. 15. *That all Laws are the law of nature, cuſtomes or ſtatutes.*

The Chancelor anſwered ſaying: you have wel cõmitted to memory, moſt worthy Prince, all that I have hitherto declared unto you, Where-

CAncellarius, memoriæ tuæ, *Princeps optime*, commendaſti, quæ tibi hucuſque ſuggeſſi, quare &

quæ jam interrogas meritus es ut pandam. Scire te igitur volo, quod *omnia jura humana, aut sunt lex naturæ, consuetudines, vel statuta, quæ & constitutiones* appellantur. Sed consuetudines & legis naturæ sententiæ postquã in scripturã redactæ, & sufficienti auctoritate principis promulgatæ fuerint, ac custodiri jubeãtur, in constitutionũ sive statutorũ naturam mutantur, & deinde penalius, quã antea subditos principis ad earum custodiam constringunt, severitate mãdati illius,

fore you are well worthy to have this doubt opened, whereupon now you have moved your question. You shall therefore understand, that all humane Lawes are either the Law of nature, or customes, or else statutes, which are also called constitutions. But customs and the sentences of the Law of nature, after that they were once put in writting, and by the sufficient authority of the Prince published & commanded to be kept were changed into the nature of constitutions, or statutes, and did after that more penally, then before, bind the subjects of the Prince to the keeping of them, by the severity of his commandement,

Of

Of this sort are the most part of the Civile lawes, which of the Roman Princes are digested in great volums and by their authority commanded to be observed. And not they onely are called by the name of the Civill Law, but also all the other statutes of Emperours. Now then, if that among these three welsprings of all Law, I prove the preeminence of the Law of England to excell above the rest: I shall therewith prove the same Law to be good and effectuall for the government of the kingdom. And further, if I do shew it to be as commodious for the wealth of the Realme, as the Civill Lawes are for the wealth of the Empire,

qualis est legum civilū pars non modica, quæ a Romanorum principibus in magnis voluminibus redigitur, & eorum auctoritate observari mādatur? Unde legis Civilis, ut cætera Imperatorū statuta, jam pars illa nomen sortita est. Si igitur in his tribus quasi omnis juris fontibus, legis Angliæ præstantiā probaverim, præfulgere, legem illam, bonam esse & efficacem, ad regni illius regimen, etiam comprobavi. Deinde si eam, ad ejusdem regni utilitatem, ut leges civiles ad imperij bonum,

accommodam eſſe lucide oſtenderim, nedum tunc legem illam præſtantẽſed &, ut leges civiles, electam (ut tu optas) etiam patefeci. Igitur hæc duo tibi oſtendere ſatagens, ſic progredior.

then ſhal I make evident & plain not only that this law is of much excellency, but alſo that it is an elect and choſen law, as well as the Civill laws are: which is the thing that you require. Wherefore to the proof and declaration of theſe two points, thus I proceed.

Chap. 16. *The Law of nature in all countries is all one.*

LEges Angliæ in his, quæ ipſe cõciũt legis naturæ ratione, non meliores pejoreſve ſunt in judicijs ſuis, quã in cõſimilib⁹ ſunt omnes leges cæterarum nationum Quia, ut dicit *Philoſophus* 5. *Ethicorũ*: *Jus naturale eſt, quod apud omnes homines*

THe Laws of Englãd, in thoſe things, which they by force of the Law of nature do ratifie and eſtabliſh, are neither better nor worſe in their judgements, then the laws of all other nations are in the like caſes. For as Ariſtotle in the 5. book of his Moral Philoſophie ſaith: The Law of nature is that which among all people hath

hath like ſtrength and power, wherefore hereof to reaſon any longer it ſhall not availe. But now henceforth we will ſearch out what manner of Cuſtomes & Statutes theſe of England are. And firſt the quality of thoſe cuſtomes wee will conſider.

eandem habet potentiam, quare de ea amplius diſceptare non expedit. Sed quales ſunt Angliæ conſuetudines ſimiliter & ſtatuta, eſt a modo perſcrutãdũ, & primo conſuetudinũ illarum viſitabimus qualitates.

Chap. 17. *The Cuſtomes of England are of moſt antient antiquity, practiſed and received of ſeverall Nations, from one to another, by ſucceſſion.*

THe Realm of England, was firſt inhabited of the Britons, next after them the Romans had the rule of the land, and then again the Britons poſſeſſed it, after whom the Saxons invaded it, who changing the name thereof did for Britain call it England, af-

REgnũ *Angliæ*, primo per *Britanos* inhabitũ eſt, deinde per *Romanos* regulatum, iterumq; per *Britanos*, ac deinde per *Saxones* poſſeſſum, quĩ nomen ejus ex *Britannia*, in *Angliam* mutaverũt: ex tunc

ter then for a certain time the Danes had the dominion of the Realm, and then Saxons again, but laſt of all the Normans ſubdued it, whoſe diſcent continueth in the government of the kingdom at this preſent. And in all the times of theſe ſeverall nations and of their kings, this realm was ſtill ruled with the ſelf ſame cuſtoms, that it is now governed withall. Which, if they had not been right good, ſome of thoſe kings moved either with Juſtice, or with reaſon or affection, would have changed them, or elſe altogether abolished them, and eſpecially the Romans, who did judge all the reſt of the world by their own laws. Likewiſe would

per *Danos* idē regnum parumper dominatum eſt, & iterum per *Saxones* ſed finaliter per *Normannos*, quorum propago regnum illud obtinet in præſenti. Et in omnibus nationum harum & regum earū temporibus, regnum illud eiſdem, quibus jam regitur, conſuetudinibus continué regulatum eſt. Quæ, ſi optimæ non extitiſſent, *aliqui regum illorū, juſtitia, ratione, vel affectione* concitati eas mutaſſent, aut omnino deleviſſent, *& maxime Romani*, qui legib⁹ ſuis quaſi totū orbis reliquū judicabā. Si-

militer

militer & alij regũ prædictorũ, qui ſolùm gladio regnum Angliæ poſſiderunt, quó & potentia ſimili, ipſi, leges ejus exinaniſſe valuerũt. Neq; vero tantorũ tẽporum curriculis, *leges civiles, in quã tum Romanorum, inveteratæ ſunt*, neque *Venetorũ* leges, quæ ſuper alias ãtiquitatedivulgantur, quorum tum inſula, in initio *Britonum*, inhabitata non fuit, ſicut nec *Roma* cõdita, nec ullorũ mũdi regnorũ deicolarũ leges tanto ævo inolitæ ſunt: Quare non bonas, immo non optimas eſſe, *Anglorum* conſuetudines,

other of the foreſaid kings have done, which by the ſword, only poſſeſſing the realm of England, might by the like power & authority have extinguiſhed the Laws thereof. And touching the antiquity of the ſame, neither are the Roman Civil laws, by ſo long cõtinuãce of ancient times, confirmed, nor yet the Laws of the Venetiãs, wch, above all other are reputed to be of moſt antiquity, forſomuch as their Iland in the beginning was not then inhabited, as Rome then alſo unbuilded, neither the laws of any Paynim natiõ of the world, are of ſo old and ancient years: Wherfore the contrary is not to be ſaid nor thought, but that the Engliſh cuſtoms

ſicut non dicere, ita nec ſuſpicari fas eſt.

are very good, yea of all other the very beſt.

Chap. 18. *Here he ſheweth with what gravity Statutes are made in England.*

STatuta tunc Anglorū, bona ſint necne, ſolum reſtat explorandum. Non enim emanant illa a principis ſolum voluntate, ut leges in regnis, quæ tantum regaliter gubernantur, ubi quandoque ſtatuta ita conſtituentis procurant cōmodum ſingulare, quod in ejus ſubditorū ipſa redundant diſpendium, & jactura: Quandoq; etiam inadvertētia principiū hujuſmodi, & ſibi conſulentium inertia, ipſa

NOw whether the ſtatutes of England be good or not, that onely remaineth to be diſcuſſed. For they proceed not only from the Princes pleaſure, as do the laws of thoſe kingdoms that are ruled onely by regall government, where ſometimes the ſtatutes do procure the ſingular commodity of the maker, that they redound to the hinderance and dammage of his ſubjects: Sometimes alſo by the negligence and overſight of ſuch princes, and their ſleight regard, reſpecting onely their own commodities, they

are

are so unadvisedly made, that they are more worthy to have the name of disorders, then of well ordered Lawes: But Statutes cannot thus passe in England, forsomuch as they are made not only by the Princes pleasure, but also by the assent of the whole Realme: so that of necessity they must procure the wealth of the people, and in no wise tend to their hinderance. And it cannot otherwise be thought but that they are replenished with much wit and wisdome, seeing they are ordained not by the devise of one man alone, or of a hundred wise Counsellors onely, but of more then three hundred chosen men, much agreeing with the number of the ancient

tam in consulte edũtur, qd corruptelarum nomina potius, quã legum, illa merentur. Sed non sic Angliæ statuta oriri possunt, dum *nedum principis voluntate, sed & totius regni assensu*, ipsa conduntur, quo populi læsurã illa efficere nequeunt, vel non eorum cõmodũ procurare. Prudentia, etiam & sapientia necessario ipsa esse referta putandũ est, dum non unius, aut centũ solũ consultorũ virorũ prudentia, sed plurquãq; recentorũ electorum hominum, quali numero olim *senatus Romanorũ*, rege-

regebatur, ipſa edita fuit, ut hii qui parliamẽti Angliæ formam, convocationis quoq; ejus ordinem & modum, noverunt, hæc diſtinctius referre norũt. Et ſi ſtatuta hæc, tanta ſolemnitate & prudentia edita, efficatiæ tantæ, quantæ conditorũ cupiebat intentio, non eſſe contingant: concito reformari ipſa poſſunt, & non ſine cõmunitatis & procerum regni illi⁹ aſſẽſu, quali ipſa primitus emanarũt: patẽt igitur jam tibi, *princeps*, legum anglorum ſpecies omnes. Earum quoq; qualitates, ut ſi bonæ

Senatours of Rome: as they that know the fashion of the Parliament of England, and the order and manner of calling the same together, are able more distinctly to declare. And if it fortune these Statutes beeing devised with such great solemnity and witte, not to fall out so effectually, as the intent of the makers did wish: they may be quickely reformed, but not without the assent of the commons, and states of the Realme, by whose authority they were first devised: Thus most worthie Prince, you doe plainely understand all the kindes of the Lawes of England. And touching their qualities, as whether they bee

good

good or no, you shall be able to measure that, as wel by your own wit, as by comparing them with other lawes: And when ye shal find none in the whole world of like excellencie, you must of force grant them to be not onely good, but also on your behalfe most to be embraced.

ipsæ sint, metiri tu poteris prudentia tua, comparatione etiam aliarum legum: & cum nullam tantæ præstantiæ in orbe reperies, eas nedum bonas, sed tibi optabilissimas fore, necessario constiteberis.

Chap. 19. *Here hee deviseth a means how to know the diversity, betweene the Civill Lawes, and the Lawes of* England.

One only doubt, wherewith your mind is troubled, remaineth now behind undiscussed. And that is this: whether as the civil lawes, so likewise the lawes of England, be fruitful and effectual, these for the realme of England,

SOlum jam unum de his, quibus agitatur animi tui, restat explanandũ uz. an, ut Civiles, ita & Anglorum leges, frugi sint & efficaces, illi Angliæ regno, ut illæ imperio,

rio, etiam & accommodæ judicare mereantur. *Comparationes* vero, *Princeps*, ut te aliquãdo dixisse recolo, *odiosæ reputantur*: quo eas egredi non delectator: tu, an æqualis sint ambæ leges meriti, unave altera celsius præconium mereatur, non ex meo juditio, sed ex his, in quibus earum differunt sententiæ efficacius carpere poteris argumentum, Nam ubi conveniunt leges ambæ, æqualis laudis ipsæ sunt, sed in casibus, ubi ipsæ, dissentiunt, præstantioris legis præconia, digna pensati-

as the other for the Empire, and whether they may worthily be judged fitte and meete. Comparisons, most noble Prince, (as I remember I heard you once say) are compted odious. Wherfore I am loath to meddle with them: but whether they be both of like worthyness, or that the one deserveth an higher commendation then the other, hereof you may gather a pithier argument, out of those points, wherin their sentences do differ, then by my declaration. For where both the Lawes do agree, the praise of them is equall. But in cases where they disagree, the worthier Law is most praise worthy.

thy. Wherefore we will now propound some such cases, to the intent you may indifferently ponder and weigh, whether of these doth most justly and better define the same: And first, wee will put forth examples of cases of much weight.

one refulgent. Quare casus hujusmodi aliquos jã in mediũ proferemus, ut que legũ illarum, eos justius meliusq; definiat, æqua lance valeas põderare & primo ex casibus maximi põderis, exempla proponamus.

Chap. 20. *The first case wherein the Civil Laws, and the Lawes of* England *doe differ.*

If they that have a matter of controversie depending before a Judge, come to the contestation of the suit upon the matter of the deede, which the Lawyers of England call the issue of the plea: the truth of such an issue, by the ciuill Lawes, must be tryed by the deposition

Si coram Iudice contẽdentes, ad litis perveniãt contestationem super materia facti quam Legis Angliæ periti, *exitum placiti* appellant: Exitus hujusmodi veritas, per Leges Civiles, testium depositione

pro-

Probari debet, in qua duo teſtes idõei ſufficiũt; Sed per leges angliæ *veritas illa, nõ, niſi* 12. *hominum de vicineto, ubi factũ hujuſmodi ſupponitur, ſacramẽto, Judici cõſtare poterit.* Quæritur igitur, quis horum duorũ proceſſuum tam diverſorum, rationabilior cenſeri debeat & efficatior ad veritatẽ, quæ ſic quæritur, revelandã Quia lex, quid eam certius meliuſquoſlẽdere poteſt, præſtantior in hoc eſt lege altera quæ non tantæ efficatiæ eſt & virtutis, quare in hujus rei indagine ſic procedimus.

of witneſſes wherin two allowable witneſſes are ſufficient. But by the Lawes of England, the truth of the matter cannot appeare evident to the Judge, without the oathes of twelve men neighbours to the place, where ſuch a deed is ſuppoſed to bee done. Now therfore the queſtion is, whether of theſe two ſo divers proceedings ought to bee eſteemed more reaſonable and effectuall for the opening of the truth, which thus is ſought for. For the law, that can more certainly and better ſhew the truth is in this behalfe of more excellency, then the other that is of leſſe efficacy and force, wherfore in the ſearch of this matter thus we proceed.

Here

Chap. 21. *Here are set forth the inconveniences proceeding of that Law, which no otherwise then by witnesses admitteth trials.*

By the Civill lawes, the party which in the issue holdeth the affirmative, must bring forth witnesses, which hee himselfe at his own pleasure shall name. But the negative cannot be proved directly, though indirectly it may. For the habilitie of him is thought to bee very small and weake, and his wit much lesse, which among all the men that hee knoweth, is not able to find two so voyd of conscience and trueth, which for dread, love, or profit, will not be readie to gainsay all truth. Such then may bee produced for witnesses on his side.

PEr leges Civiles, pars quæ in litis cõtestationẽ affirmatiuã dicit, *testes* producere debet, quos ipsemet ad libitum suũ nominabit. Negativa autẽ probari nõ potest, uz. directe, licet possit per obliquũ. Exilis quippe creditur esse potẽtię, minoris quoq; industriæ, qui de õnib⁹ quos nosci hominib⁹ duos repetire nequit, ita cõsciẽtia & veritate vacuos, ut timore, amore, vel cõmodo, omni velint cõtrarie verirati. Hos potes tunc ipso in testes producere in causa sua,

Et ſi contra eos pars altera dicere velit, vel contra eorũ dicta, non ſemper continget, eos eorũ quoque mores aut facta apud contradicere volentẽ, agnoſci, ut ex eorũ feditate & vitiis, teſtes illi poſſint reprobari. Et dũ eorũ dicta affirmativã cõtineãt, nõ facile poterũt illa per circũſtãtias aut obliqua alia improbari: Quis tũc poterit ſuorũ aut ſui ipſius, ſub lege tali, vivere ſecurus, dũ cuilibet, ſibi inimicari volẽti lex tale præſtat ſubſidium? Et qui iniqui duo tam incauti ſunt, quo facti, de quo ipſi examina-

And if the other party would object any thing againſt them, or their ſayings, it chanceth not ever, that they and their cõditions & doings are knowen to the contrary party, ſo that by reaſon of their ſoul lives and vicious behaviour, ſuch witneſſes might be repꝛoved. And while their ſayings conteine the affirmative, it ſhall be very hard to repꝛoove them by circumſtances,, or any other indirect meanes: who then ſhall be able to liue in ſurety of his goods or of himſelf under ſuch a law, that miniſtreth ſuch ayde to every buſy body that luſteth to trouble another? And what 2. wicked mẽ are ſo unwary & uncircumſpect, wᶜʰ touching the deede, whereof, they ſhall be

be examined in judgment, will not, before they are called forth for witnesses, secretly imagine & devise a form and fashion thereof, & frame thereunto all circumstances, even such, as must needs have bin so, if the thing had bin true indeed? For the children of this world (saith the Lord) are wiser then the childrē of light. So the most wicked Jesabel brought forth witnesses of the children of Belial in judgement against Nabot, whereby he lost his life, & King Achab her husband obtained the the possession of the vineyard. So the most chaste matron Susanna should have died for adoutrie by the witness of two old dotards being judges, if the Lord had not marvel-

buntur in initio, non, antequā in testes producātur, occulte fingant imaginem & figurā, componant quoq; eidē oēs circumstantias, quales sibi fuissent, si illud in veritate constitisset? *Prudentiores namq;* ut dicit dominus, *sunt filii hujus mundi quam filii lucis.* Sic *Jesabel* sceleratissima, testes duos, filios *Belial* contra *Nabot* in juditio produxit, quo ipse vitam perdidit, & *Acbab* rex, ejus vincā possidebar. Sic duorum senum etiam Judicū testimonio, mortua fuisset pro adulterio, uxor castissima

Suſanna, ſi non eam miraculoſe liberaſſet dominꝰ inexcogitabili prudentia, quam a natura non habuit puer junior nondum ætate proveꝯ. Et ſi ipſos, depoſitione ſua varia, cõvicerat puer ille, eſſe falſarios, quis, niſi ſolũ dominus, noviſſe poterat eos in dictis ſuis taliter variaturos? dũ, non de arboris natura, ſub qua imputatum facinus fiebat, lex aliqua eos arctabat reminiſci. Quia teſtes ſceleris cujuſq; cõſiderare nõ putãtur omnis umbracula & cætera vicina illi facto, quæ ad aggravationem vel delouſly delivered her by a wõderful feat of prudence, which of nature the young childe had not, being yet under age. And though the ſame childe by their altering and doubting in their depoſitions did convict thẽ to be falſe wꝛetches, yet who (ſave onely the Lord) could have knowen that in their ſayings they wonld thus have diſagreed? Seeing there was no Lawe that did moove them to have in remembꝛance what kind of tree it was, whereunder the fact was ſuppoſed to be done. For the witneſſes of every wicked deed are not thought to conſider all circumſtances appertaining to the ſame, being ſuch as do nothing help to the

the aggravation and detection of the fault. But while those wicked Judges, willingly swearing, did alter touching the kinds of trees, their own words proved them to be false Jurors: Wherefore they worthily suffered the same punishment themselves.

You, also most gracious Prince, do know how that lately Master John Fringe, after that he had continued three years in the order of Priesthood, was compelled by the deposition of two wicked persons, which witnessed that he had, before he was made Priest, betrothed himself to a certain young woman, to forsake the holy order of Priesthood,

tectionē criminis illi⁹ minime operātur. Sed dum de arborū specieb⁹, judices illi nequā ultro deponētes, variabant, eorum dicta ipsos veritatis fuisse prævaricatores demōstrabant: quo & talionis pænē merito incurrerunt. Nosti & tu, *Princeps divine*, qualiter jam tardē *magister Johannes Fringe*, qui, postquam annis tribus sacerdotali functus est officio, duorum iniquorum depositione qui eum antea juvenculam quandam affidasse testati sunt, sacrū presbiteratus ordinē relinquere cōpulsus est,

& matrimoniū cum femina illa conſummare. Cū qua, poſtquam annis 14. moratus, ſobolē ſeptimā ſuſcitaverat, demū de crimine læſæ majeſtatis in tuā celſitudinem conjurato convictus, ſubornatos fuiſſe teſtes illos, & falſū dixiſſe teſtimonium, in mortis ſuæ articulo, coram omni populo, faſſus eſt. Qualiter & ſæpe peruerti judicia, falſorum teſtium medio, etiam ſub optimis judicibus, non eſt tibi inauditum, nec incognitum mundo, dum ſcelus illud (proh dolor) creberrime commitatur.

and to marry the ſame woman. With whom when he had lived fourteen years, and had begotten ſeven children of her, at the laſt being convicted of Treaſon, conſpired againſt your Highneſs, he confeſſed before all the people even at the very point of death, that thoſe witneſſes were hyred, and that their depoſitions were falſe. And thus many times are judgements perverted by the mean of falſe witneſſes, yea, and that under the very beſt Judges, as unto you it is not unheard, nor to the world unknown, while this wickedneſs (the more is the pitie) is often committed.

¶ Chap.

¶ Chap. 22. *Of the crueltie of Rackings.*

Therefore the law of France, in offences criminal, whereupon death dependeth, is not content to convict the party accused by witnesses least by the testimony of false persons, innocēt blond should be condemned. But that law choseth rather to torment such offenders with racking, untill they themselves confess their own fault, rather then by the deposition of witnesses, which many times though wicked affections, & sometimes by the subornation of evill men, are moved to perjurie. Upon this, and such like cautels and respects, offenders and suspect persons are in that realm with so many kinds of rackings

NOn igitur cōtenta est lex *Franciæ* in criminalibus, ubi mors imminet, rei ū testibus convincere, ne falsidicorū testimonio sāguis innocēs condemnetur. Sed mavult lex illa reos tales *torturis* cruciari, quousq; ipsi eorum reatum cōfiteantur, quam testium depositione qui sæpe passionibus iniquis, & quandoq; subornatione malorum, ad perjuria stimulantur. Quali cautione & astutia, criminosi etiam & de criminibus suspecti, tot torturarum in regno illo generibus

affliguntur, quod faſtidit calamus ea, literis deſignare. Quidam vero equuleis extenduntur, quo eorum rumpuntur nervi, & venæ in ſanguinis fluēta prorumpunt: Quorundam vero, diverſorum ponderum pendulis diſſolvuntur compagines & junctūræ: Et quorundam gaꝛgantur ora, uſque dum per illa, tot aquarum infundantur fluenta, ut ipſorum venter montis tumeſcat more, quo tunc venter ille, foſſorio vel ſimili percuſſus inſtrumēto, per os aquam illā evomat, ad inſtar

tozmented, that my pen abhozreth to put them in wzitting. Foz ſome are ſtretched out upon a hozſe in ſuch wiſe, that their ſinews bzeak and their vains guſhe out with ſtreams of bloud: Again, other ſome have divers great weights hanged at their feet, wherebp their lymmes and joynts are diſſolved and unlooſed: Some alſo have their mouthes ſo long gaged open till ſuch aboundance of water be powzed in, that their belly ſwelleth like a hill oz a tonne, to the intent that then the belly being pierſed with ſome bozing inſtrument, the water may iſſue & ſpout out thereat, and at the mouth ſtreamwiſe, not much unlike a

whale,

Whale, which, when he hath lapped up, and swallowed down a great quantity of Sea water, with herrings and other small fishes, gusheth out the same water again, as high as the toppe of any Pine apple tree. My penne is both weary and ashamed to rehearse the outragiousnes of torments devised in this behalf: For the number of them is so great, that it can skant well be noted in a whole skinne of parchement. Moreover the Civill Lawes, for want of witnesses, do fetch out the truth by such rackings: And so doe divers other Countries too. But who is so hard harted, which being once

Balenæ, quæ, cum halecibus & aliis pisciculis mare absorbuit, aquam despumat ad altitudinem arboris Pini. Piget (proh pudor) jam penna exquisitorum ad hæc cruciatuũ enarrare immania. Nam eorum variatus numerus, viz. notari poterit magna in membrana. Leges etiam ipsæ Civiles, deficiente testium copia, in criminalibus, veritatem consimilibus extorquent tormentis: Qualiter & faciunt etiam quàm plurima Regna. Sed quis tam duri animi est, qui semel

ab atroci tanto torcular laxatus, non potiùs innocẽs ille, omnia fateretur ſcelerum genera, quàm acerbitatem ſic experti iterum ſubire tormenti, & non ſemel mori maller, dum mors ſit ultimum terribilium, quam toties occidi, & totidem gehenales furias morte amariores ſuſtinere? Et nonne, *princeps*, tu noviſti criminoſum quendam qui inter tormenta hujuſmodi, militem nobilem, probum, & fidelem de proditione quadam, ſuper qua, ut aſſeruit, ipſi duo inſimul conjurarunt,

releaſed out of ſo cruell a Rack, though he be innocent and faultleſs, would not yet rather accuſe himſelf of all kinds of offences, then again to commit himſelf to the intollerable cruelty of the torment once proved: and had not rather die at once (ſeeing death is the end of all miſeries) then ſo often to be killed, and to ſuſtain ſo many helliſh furies, painfuller then death it ſelfe? And did not you, moſt worthy Prince, know a certain offender, which in ſuch torments accuſed a worſhippefull, yea, a right good and faithfull Knight of Treaſon, wherein, as hee ſaid, they two had conſpired together, which

which treason, he himself, being released from the rack, afterward attempted and accomplished, thereby to acquit himself from comming to the torture again. But at the last, by meanes of those torments being so maimed in his bodie, that thereby he was brought in despair of his life, and thereupon receiving his howsel he then swore by the same body of the Lord, and by the death which he beleeved that he should forthwith die, that the said knight was innocent and guiltles in all things whereof he had accused him, howbeit the paines, wherein he was at the time of that his accusation, he said were so extreme, that rather then he

accusaſſe, qd & conſtanter poſtmodum ipſe fecit, a torturis illis relaxatus, ne iterum eadē tormēta ipſa ipſe ſubiret. Sed demum, cum ex pęnis illis lęſus uſq; ad mortis articulū mārmaretur, ultimū quoq; viaticum, chriſti videlicet corpꝰ ſuumpſiſſet: Juravit tunc ſuper corpus illud, & per mortē, quā tūc proximè credidit ſe paſſurum, militem illū innocentē fuiſſe & immunem de omnibus in quibus eum accuſavit, tamen ait pęnas, in quibus ipſe tempore delationis ſuæ fuerat, ita atroces extitiſſe, qd priuſ-

priusquam

periusquã eas iterũ experiretur, etiã eũdem militẽ ille iterum accusaret, similiter & patrem proprium, licet tunc in mortis limine, quã non credidit se posse evedare, fuerit cõstitutus, nec vero, ipse mortem, quã tunc metuit, evasit. Sed demum suspensus, tempore mortis suæ ipsum militem purgavit ab omni crimine, de quo dudum defamavit. Taliter, proh dolor, & quam plures alii miseri faciunt, non veritatis causa, sed solum urgentib' torturis arctati, quid tunc certitudinis resultat, ex confessionibus tali-

would feel the same again, he would not stick to accuse the said Knight again, yea, and his own Father too, This he said, being then at the very point of death, which hee beleeved he could not then escape, no, nor he escaped not the death of which he then feared. But afterward being hanged, at the time of his death, hee cleared the said Knight of all crimes whereof before he had defamed him. Thus (O pittiful case) doe many other wretches, not for the truths sake, but forced thereunto by the extremity of torments, And what certainty then can arise of the confessions of miserable tormented persons?

But

But if some innocent bodie, having his minde fixed upon eternal salvation, would in such a Babylonicall Fornace, with the three Children bless and magnifie the LORD, and not lie to the damnation of his own soul, in that the Judge pronounceth him unguiltie, doth not that Judge by the self-same judgement judge himself guilty of all the cruelty and pains, where with he hath tormented the innocent? O how cruell is such a Law, which in that it can not condemn the silly innocent, condemneth the Judge? Surely such a custome is not to be accounted a Law, but rather the high

ter compressorum? Cęterum si innocẽs aliquis non immemor salutis æternæ in hujusmodi Babilonis fornace, cum tribus pueris benedicat domino, nec mentiri velit in perniciem animæ suæ, quo judex eum pronunciat innocentẽ, nõne eodẽ judicio, Judex ille, seipsum reum judicat omnes sævitię & pęnarum, quibus innocentem afflixit? O quã crudelis est lex talis, quæ dum innocentem dampnare nequit, judicẽ ipsa cõdemnat? Vere non lex ritus talis esse perhibetur, sed potius semita ipsa est ad

gehennam. O iudex quibus in Schola didiciſti, te præſentem exhibere, dum pœnas luit reus? Executiones quippe iudiciorum in criminoſos, per ignobiles fieri conuenit: Nam earum actores, infames ſolent eſſe ipſo facto, quo & ipſi deinde ad iudicialem apicem reddantur indigni: non enim per angelos, ſed per dæmones exequi facit dominus iudicia ſua reddita in damnatos. Nec revera in purgatorio cruciat animas, quãvis predeſtinatas ad gloriam angeli boni, ſed mali. Maligni etiam homines ſunt per-

way to the Deuil. O Iudge, in what Schoole haſt thou learned to be preſent whille the offendor is tormented? For the executions of iudgments upon offenders ought to be done by me of baſe degrée: the doers whereof do purchaſe to themſelues preſent infamy by the deed doing, inſomuch that euer after they are diſabled from the gouernment of a iudge: neither doth the Lord God execute his iudgments, pronounced againſt the damned by angels, but by deuils. Yea, and in Purgatory the ſoules there remaining, though they be predeſtinate to glory, yet are they not tormented with good angels, but of euil. Thoſe alſo are euill and wicked men by whom the

the Lord in this world doth minister to wretched sinners deserved punishment. For, when God said in the two and twentieth Chapter of the third book of Kings: Who shall deceive Achab? It was an evil spirit that answered: I will be a lying spirit in the mouth of all his prophets. For it becommeth not a good spirit to take upon him the execution of such things, though this judgement proceeded from the Lord, that Achab should be deceived by a lie. But the Judge peradventure will say: I with mine own hands did nothing in these torments. But what differeth it, whether one be a doer with his own hands, or else be present

quos dominus in hoc mundo miseris tribuit malum pœnæ. Nam, cum dixerat Deus iij. Regum in Capitulo vicesimo secundo: *Quis decipiet mihi Achab?* malus erat spiritus, ille, qui respondit: *Ego ero spiritus mendax in ore omnium Prophetarum ejus.* Non enim decuit spiritum bonum exequi talia, licet à domino prodiit judicium, quod *Achab* mendacio deciperetur. Sed dicet Judex forsan: Ego nihil egi manibus meis in cruciatibus istis. Sed quid refert propriis facere manibus, an pra-

præſentem eſſe, & quod factum eſt, mandato ſuo iterum atque iterum aggravare: Solum magiſter navis eſt qui eam ducit ad portum, licet ejus mandato alii agitent proram. Credo quod vulnus, quo ſauciatur animus judicis pœnas hujuſmodi infligentis, nunquam in cicatricem veniet, maxime dum recolit acerbitatem pœnarum miſeri ſic afflicti.

at the doing, and the thing that is done to exaſperate it by his commandment. It is onely the Maſter of the ſhip that bringeth it to the Haven, though by his commandement an other be the Steereſman, I beleeve that the wound wherewith the minde of the Judge thus tormenting any man is plagued, will never be healed again, eſpecially while he remembreth the extremitie of the pains ſuſtained by the poor wretch in thoſe miſerable torments.

Chap. 23. *Here he ſheweth that the Civil Law oft faileth in doing of Juſtice.*

PRæterea, *ſi ex contractibus, il-*

MOreover, if by reaſō of bargaining, or by ſuffe-

suffering of injuries, or by Title of inheritance, right doe accrew to a man, to plead in judgement: If there be no witnesses, or if such as were witnesses be dead, the Plaintiffe must needs let his Action fall, except he be able to proove his right by inevitable conjectures, which is seldome seen. Wherefore concerning Lordships, and other possession ruled by the Civill Law, And in all Actions falling under the same Law, the Actions of the Plaintiffs, for want of witnesses, many times are choaked, so that scant the half part of them attaineth to the desired

latisve injuriis, vel hæreditatis titulo: jus accreverit homini agendi in judicio: si testes non fuerint, vel, si qui fuerint, moriantur, succumbet ipse agens in causa sua, nisi jus suũ probare valeat inevitabilibus conjecturis, qd facere crebo non contingit. Quare de dominiis & aliis possessionibus jure civile regulatis, similiter & in omnibus actionibus cadentibus sub eodẽ jure, *actiones agentium* pro defectu testium quam pluries suffocantur, ita quod earum vix pars media optatum finem sortiatur.

tur. Qualis tunc eſt lex hujuſmodi, quæ injuratis, taliter deficit in juſtitia reddenda? dubito an juſta vocari mereatur, quia in eadem lege ſcribitur quod *Juſtitia unicuique tribuit quod ſuum eſt*, quod non faciat lex talis.

ende. What manner of law then is this, which to them that ſuſtain wrong thus faileth in yeelding Juſtice? I doubt whether it deſerveth to be called a juſt Law, becauſe in the ſame Law it is written, that Juſtice rendreth to every man that which is his own, But this cannot ſuch a Law do.

Chap. 24. *Here he declareth, how Counties are divided, and Sheriffs choſen.*

EXpoſita jã forma, qua leges Civiles de veritate facti in Judicio deducti judicem erudiunt, ſupereſt ut *modum, quo leges Angliæ hujuſmodi facti eliciunt veritatem* etiam doceamus.

NOw that we have opened, after what manner the Civill Laws do inform a Judge of the truth of a matter brought into judgement, it is conſequent to declare by what means the Laws of England do boult out the truth of ſuch a matter.

For

for the orders of both the Laws being laid together, the qualities of them both will more plainly appear: forsomuch as the Philosopher saith, that contraries, placed one by another, will shew themselves more evidently. But herein, after the manner of Orators, in stead of a Proheme, it shall not be amisse, that we open certain things before, the knowledge whereof will give light to things which hereafter shall come in talke, wherefore thus we doe proceed. The Realm of England is divided into Counties, as the Realm of France, is into Bayliwicks, so that in England there is no place

Nam ambarum legum formulis contigue positis, qualitates earundum lucidius eminebunt: cum dicat Philosophus, quod *opposita juxta se posita magis apparent*, Sed in hoc. Oratorum more (Prohemii loco) quædam prænarrare congruet, quorum agnitione, deinde tractanda clarius patere queant, quare sic procedimus. Regnum Angliæ per *Comitatus*, ut regnum Franciæ per *Ballivatus*, distinguitur, ita ut non sit locus in Anglia, qui non sit infra

corpus alicujus comitatus. Comitatus quoque dividuntur in *Hundreda*, quę alicubi *Waſentagia*, nuncupantur. Hundreda verò dividuntur per *Villas*, ſub quarum appellatione continentur & *Burgi atque Civitates*. Villarum etenim metæ, non muris, ædificiis, aut ſtratis terminantur, ſed agrorum ambitubus, territoriis magnis, *Hamiletis* quibuſdã & multis aliis, ſicut aquarum, boſcorum & vaſtorum terminis, quæ jam non expedit nominibus deſignare, quia vix in Anglia eſt locus aliquis,

that is not within the body of ſome County. Counties alſo are devided into Hundreds, which ſomewhere are called Wapentages. And Hundreds are devided into Villages, under which appellation are conteined Borrows, and Cities. For the boundes of Villages are not conteined within the circuit of Walles, Buildinges, or Streets, but within the compaſs of Fieldes, great Territories, certaine Hamlettes, and many other, as of Waters, Woods, and waſte Groundes, which it is not needfull now to ſet forth by their names: becauſe that in England there is skant any place, which

which is not contained within the compass of Villages, though certain Privileged places within villages, are supposed to be no parcel of the same Villages. Moreover in every Countie there is one certain Officer called the Kings Sheriffe, which among other duties belonging to his Office, putteth in execution all the commandements and iudgements of the kings courts, that are to be executed within his counties: His office endureth but for one yeere, so that after the expiration of the yeer, hee may not minister in that Office, Neither shall hee, within two yeers next ensuing, be admitted to the same Office again.

qui non infra villarum ambitus contineatur, licet privilegiati loci quidam infra villas de eisdem villis pars esse non censentur. Preterea in quolibet comitatu est officiarius quidam unus, *regis vicecomes* appellatus, qui inter cætera sui Officii ministeria omnium mandata & judicia curiarum regis in comitatu suo exequenda, exequitur, *cujus officium annale est*, quò ei post annum, in eodem ministrare non licet, *nec duobus* tunc sequentibus annis ad idem officium reassumetur. Officiarius

arius iſte ſic eligitur. Quolibet anno in *creatione animarum*, conveniunt in ſcaccario regis omnes conſiliarii ejus tam domini Spirituales & temporales, quam alii oēs juſticiarii, omnes Barones de ſcaccario, Clericus rotulorum, & quidē alii officiarii, ubi hii oēs cōmuni aſſēſu, nomināt de quolibet comitatu tres milites vel armigeros, quos inter cæteros ejuſdem comitatus ipſi eligitur melioris eſſe diſpoſitionis & famæ, & ad officium vicecomitis cōitatus illius melius diſpoſitos ex quibus Rex

This Officer is thus choſen. Every yeer, the morrow after All Souls day, all the Kings Counſellors meet together in the Kings Exchequer, as wel the Lords Spirituall and Temporall, as all other Juſtices, all the Barons of the Exchequer, the Maſter of the Rolles, and certain other Officers, where all theſe with one common aſſent do name of every County three Knights or Eſquires, whom among other of the ſame County they take to bee of good diſpoſition & fame, and beſt diſpoſed to the Office of Sheriffe of that Countie: Of the which three the King

thoo-

chooseth one, whom, by his Letters Patents, he appointeth Sheriffe of the Countie, that he is chosen of, for the yeer then following: But he before he receive his Patent, shall sweare upon the holy Gospel, among other Articles, that he shall well and faithfully and indifferently exercise and doe his office all that yeer, and that he shall receive or take nothing of any other man then the King, by colour or mean of his office.

These things being thus now presupposed, let us proceed to the search of those things that we seek for.

unum tantũ eligit, quem per literas suas parentes constituit Vicecomitẽ comitatus, de quo eligitur pro anno tunc sequente: sed ipse, antequam literas illas recipiat, jurabit super sancta dei Evangelii, inter articulos alios, quod bene fideliter & indifferenter exercebit & faciet officium suũ toto anno illo, neq; aliquid recipiet colore aut causa officii sui, ab aliquo alio quam a rege.

His jam sic præsuppositis, ad eorũ, quæ quærimus, indaginem procedamus.

Chap. 25. ¶ *How Jurors muſt be choſen and ſworn.*

QUotieſcunque contendentes in curiis regis Angliæ, ad extiũ placiti ſuper materia facti devenerint, concito Juſticiarii per breve Regis ſcribũt vicecomiti comitatus in quo factũ illud fieri ſupponitur, qd ipſe venire faciat coram eiſdem Juſticiariis, ad certũ diẽ per eos limitatum, *duodecim probos & legales homines*, de vicineto, ubi illud factũ ſupponitur: qui neutrã partiũ ſic placitãtium ulla affinitate attingũt, ad recognoſcendũ ſuper eorum ſacramẽta, ſi factum illud factũ fuerit, ſi

AS ſoꝛt as ſuters in the courts of the king of England, are come to the iſſue of the Plea upon the matter of the fact, foꝛthwith the Juſtices by vertue of the kings wꝛit, do wꝛit unto the Sheriff of the Countie, wherein the deed is ſuppoſed to be done, that he do cauſe to come beſoꝛe the ſame Juſtices at a certain day by them limited, xii. good and lawfull men, neighbours to the place where the fact is ſuppoſed to be done: the ſame to be ſuch as be of no kin to either of the pleaders, to the end that by their oaths it may certainly be known, whether the deed were done as the one partie affirmeth,

meth, or else as the other partie denieth. Upon the day aforesaid, the Sheriff shall return the said Writ before the same Justices, together with the pannel of their names which he hereunto hath summoned: When they are come, either partie may refuse them, alleaging that the Sheriff hath made that pannel favourably for the other partie, of persons not indifferent: Which exception, if it be found true by the oath of two men of the same pannel chosen thereunto by the Justices, that pannel, shall immediatly be quashed: and then the Justices shall write to the Coro-

cut una earũdē partiũ dicit: vel non, sicut altera pars negat. Quo adveniēte die, vicecões returnabit breve perdict' corā ipsis dē Justiciariis, una cũ panello nominũ eorum, quos ipse ad hoc sũmonuit, quas (si venerint) utraq; pars recusare poterit, dicēdo qd vicec' panellũ illud favorabiliter fecit pro parte altera, vz. de personis minus indifferētib' Quæ exceptio, si cōperta fuerit vera per sacramētũ duorum hominũ de eodē panello ad hoc per Justiciarum electorum mox panellum illud quassabitur, & Justiciarii tunc scribent

Coronatorib⁹ ejuſdem cõitat⁹qd ipſi nouũ faciãt panellum. Qd cũ fecerint, ſi & illud cõſimiliter repertũ fuerit viciatũ, etiã & illud quaſſabitur: Et tũc Juſtic' eligẽt duos de clericis curiæ illius, vel alios de eodẽ comitatu, qui in preſentia curiæ per eorũ ſacramẽta faciẽt indifferens panellũ, qd deinde per nullã partium illarum calumniabitur: Sed cum venerint ſic impanellati in curia, quælibet partiũ *excipere poteſt* cõtra perſonam cujuſcunq; eorum, ſicut & poteſt in omni caſu & omni tẽpore quo aliquis qualitercũq;

roners of the ſame county, that they ſhall make a new pannel. Which when they have done, if it be likewiſe found faultie, it ſhall alſo be quaſſed: And then the Juſtices ſhall elect and chuſe two of the Clerks of the ſame court, or other of the ſame County, which in the preſence of the court upon their Oaths ſhall make an indifferent pannel, which by neither of the parties ſhall be challenged; Howbeit, when the men ſo impanelled are come into the court, either of the parties may make exceptions againſt the perſon of any of them, as hee may alſo doe in all caſes and at all times, when any man by any means impa-

impannelled shall appear to be sworn in the court upon the truth of such an issue: saying, that the person impannelled is cousin or allied to the other party, or by any kind of amity so knit unto him that he is not indifferent to declare the truth between them: and of these exceptions there are so many kinds and sorts, that they cannot be in few words rehearsed. Whereof if any one be found true, then shall not he be sworn, against whom the exception is proposed, but his name shall be cancelled in the pannel. So also shall be done of all the names of the persons impannelled until xii. of them so indifferent be sworn, that

impanellat⁹, cōparuerit in curia super veritate exitus hujusmodi juratur⁹, dicendo, qd impanellatus ille, est cōsanguineus, vel affinis parti alteri, vel amicitia quacunq; tali sibi cōjūctus, qd *indifferens ipse non est* ostendere inter eos veritatē quasiū xceptionū tot sunt genera & species, qd non licet eas brevi explicare sermone. Quarū si aliqua reperta fuerit vera, nō tunc jurabitur ille contra quē exceptio illa proponitur, sed cancellabitur nomē ejus in panello Sic quoq; fiet de omnibus nominibus impannellatorū, quousq; xij. eorum jurentur ita indifferentes, quod

quod verſus eos neutra partium habeat aliquã materiam calumpniæ: horum autẽ xij. ad minus iiij. erunt *de hundredo*, ubi villa in qua factum de quo contenditur, fieri ſupponitur, ſita eſt: & *quilibet juratorum hujuſmodi habebit terras vel redditus pro termino vitæ ſuæ, ad minus ad valorem annuum xl.s.* Et hic ordo obſervatur in omnibus actionibus & cauſis criminalibus, realibus, & perſonalibus præterquam ubi damna vel debitum in perſonalibus non excedunt xl. marcas monetæ Anglicæ, quia tunc non requiritur, quod juratores in actionibus hujuſmodi tã-

neither party can have againſt them any matter of exceptiõ or challenge: Alſo of theſe xii. iiii. at the leaſt ſhall be of the hundred, where the village ſtandeth, wherein the fact whereupon the ſuit riſeth, is ſuppoſed to bee done: And every ſuch Juror ſhal have lands or revenues for term of life, at the leaſt, to the yeerly value of xl. s. And this order is obſerved & kept in all actions and cauſes criminall, reall, and perſonall, ſaving where the dammages or debt in actions perſonall, exceedeth not the ſum of xl. marks of Engliſh money: For then it is not requiſite, that Jurors in ſuch actions, ſhall bee able to

diſpend

dispend so much. Yet they shall have land or rents to a competent value after the discretion of the Justices, Otherwise they shall not bee sworn, lest for need and poverty, such Jurors might easily be corrupt and suborned. And if by such exceptions so many Jurors names be cancelled in the pannel, that there remaineth not a sufficient number to make thereof a Jury, then the Sheriffe by the Kings Writ, shall be commanded to adjoyne moe Jurors, which thing may often bee done, so that for lack of Jurors, the inquisition of the truth upon such a plea shall not remain

tum expendere possint. Habebunt tamen terrā vel redditū, ad valorem cōpetentem, juxta discretionē justiciariorū, alioquin ipsi minime jurabantur, ne perinediā & paupertatem juratorū hujusmodi, de facili valeant corrumpi aut subornari. Et si per tales exceptiones, tot juratorū nomina in panello cancellentur, qd non remaneat numerus sufficiens ad faciendam inde juratam tunc mandabitur vicecomiti per breve regis quod ipse apponat plures juratores, qd & sæpius fieri potest, ita qd inquisitio veritatis super exitu placiti non remanebit ob defectum juratorum.

Et

Et hæc eſt forma, qualiter juratores & veritatis hujuſmodi inquiſitores eligi debēt in curia regis ſimiliter & jurari: quare quomodo ipſi de veritate illa dicendi onerari debēt & informari, jā reſtat ut quæramus.

And this is the form, how iurors, and inquiſitors of truth ought to be choſen in the kings court, and likewiſe to be ſworn: Wherefore, how they muſt be charged and informed of the uttering of the ſame truth, this now reſteth to be diſcuſſed.

¶ Chap. 26. *How Jurors ought to be informed by Evidences and Witneſſes.*

IUratis demū informi prædictā xij probis & legalib⁹ hominibus, habentibus u'tra mobilia ſua poſſeſſiones, ut prædicitur ſufficientes, unde eorum ſtatū ipſi cōtinere poterunt, & nulli partiū ſuſpectis nec inviſis, ſed eiſdē vicinis, legetur in anglico corā eis per curiā, *totum recordum & proceſſus placiti*,

TWelve good & lawful men being at the laſt ſworn in form aforeſaid having beſide their movables, ſufficiēt poſſeſſiōs as afore is declared, wherby they may be able to maintain their own ſtates, and being to neither party ſuſpect or hated, but neighbors to thē both, thē ſhall be read before them in Engliſh by the Court, all the re-

cord

cord and proceis of the plea depending between the parties, with a plain declaratiõ of the iſſue of the plea, touching the truth whereof thoſe ſworn men ſhall certifie the Court which things being done, either party by himſelf or his Counſellors in the preſence of the Court, ſhall utter and open to the ſaid ſworn men, all & ſingular matters and Evidences, whereby he thinketh he may beſt informe them of the truth of the iſſue ſo impleaded. And then may either party bring before the ſame Juſtices and ſworn men, all and ſingular ſuch witneſſes on his behalf, as he will produce, who by the Juſtices being charged upon the holy Goſpel of God, ſhall teſ-

quod pendent inter partes ac dilucide exponetur eis exitus placiti, de cujus veritate jurati illi, curiã certificabũr: quibus peractis, utraq; partũ per ſe vel cõſiliarios ſuos, in preſentia curiæ, referet & manifeſtabit eidẽ juratis omnes & ſingulas *materias evidentias*, quibus eos docere ſe poſſe credit veritatẽ exitꝰ taliter placitati. Et tunc addūcere poteſt utraque pars corã eiſdẽ juſticiariis & juratis, omnes & ſingulos teſtes quos pro parte ſua, ipſa producere velit, qui ſuper *ſanctia Dei Evangelia*, per Juſticiarios onerati, teſti-

teſtificabuntur omnia quæ cognoſcũt *probantia veritatem facti*, de quo partes contendũt. Et ſi neceſſitas exegerit, dividãtur teſtes hujuſmodi, donec ipſi de poſuerint quicquid velint, ita qd dictum uni⁹, nõ docebit aut concitabit corũ aliũ ad cõſimiliter teſtificandum. Quib⁹ conſummatis, poſtquam juratores illi deinde ad eorũ libitũ ſupra veritate exit⁹ hujuſmodi, deliberatione, quantam ipſi obtabunt, colloquium habuerint: *in cuſtodia miniſtrorum curiæ*, in loco eis ad hoc aſſignato, ne interim eos aliqui ſubornare valeant,

tifie all things prooving the truth of the fact, whereupon the parties contend. And if need ſo require, thoſe witneſſes ſhall be ſevered and divided, till they have depoſed all that they will, ſo that the ſaying of one ſhall not move or provoke another to teſtifie the like. The premiſſes being done, then after that thoſe Jurors have had talk at their pleaſure, upon the truth of that iſſue with as much deliberation as themſelves ſhall require, in the keeping of the Miniſters of the Court, within a place to them for the ſame purpoſe aſſigned, to the intent that no man in the mean time may corrupt them, they ſhall

return

return into the Court, and certifie the Justices upon the veritie of the issue so joyned, in the presence of both the parties, (if they will be there) and specially of the Plaintiff. The report of which Jurors, by the laws of England, is called a verdict, by the which word is meant, a true report, or a report of the truth: And then according to the quality of that verdict the Justices shall frame and form their judgement. Notwithstanding, if the other party, against whō the Verdict is given, complain, that he is thereby unjustly grieved, then the same party may sue a writ of attaint against those Jurors, and against the party that hath prevailed

revenient illi in curiam, & certificabunt justiciarios superveniente exitus sic junctis, in præsētia partium (si interesse velint) & maxime potentis. Quorū juratorū dictū per leges Angliæ, veredictum nuncupatur. & tunc secundū hujusmodi veredicti qualitatē, justiciarii reddēt & formabunt judiciū suum. Tamē, si pars altera, cōtra quā veredictū hujusmodi prolatū est, cōqueratur se per illudinjuste esse gravatū, persequi; tūc potest pars illa, versus juratores illos, & versus partem quæ obtinuit, breve de attincta.

Vir-

Virtute cujus, si cõpertũ fuerit per *sacramentum xxiiii. hominum*, in forma prænotata retornatorũ, electorũ & juratorum, qui multo majora habebũt patrimonia, quam juratores primi, quod iidẽ primi juratores *falsum fecerunt sacramentum*, corpora eorundẽ primorum juratorũ prisonę regis cõmittẽtur bona eorũ confiscabũtur, ac omnes possessiones eorundẽ *in manus regis capientur*, domus quoque eorum & ædificia prosternẽtur, bosci succidentur, & prata arabuntur, ipsi etiam juratores primi

By force of which Writ, that shall be found by the oath of twentie and four men, in form aforesaid returned, elect, and sworn, which shall be men of much greater livings, then the first Jurors were, that the same first Jurors have made a false oath, then the bodies of the same first Jurors shall be committed to the Kings Prison, their goods shall be confiscate, and all their possessions shall be seised into the Kings hands, their Houses also and Buildings shall be rafed and throwne downe, their Woodes felled, and their Meadowe grounds plowed. And also the same first Jurors

rors shall for ever after be noted for infamed persons, and shall in no place be received to testifie the truth: And the partie, which in the former plea had the overthrow, shall be restored to all things, which by occasion thereof he hath lost. Who then, though he regard not his soules health, yet for fear of so great punishment, and for shame of so great infamy, would not upon his oath declare the truth? And if one man peradventure have so little respect to his honour or estimation, yet some of so many Jurors will not neglect their own good fame, nor will not thorough their own default, suffer themselves

ex tunc infames erunt, *nec alicubi recipientur in testimonium veritatis:* & pars, quæ succubuit in priori placito, restituetur ad omnia, quæ ipse perdidit occasione ejus. Quis tunc (etsi immemor salutis animæ suæ fuerit) non formidine tãtæ pœnæ, & verecundia tantæ infamiæ, veritatem non diceret sic juratus? & si unus forsan tãtus sui honoris prodigus esse non pepercerit, aliqui tamen juratorum tantorum famã suam non negligent, neq; bona & possessiones suas taliter distrahi patien-

l tur,

tur, propria culpa ſua. *Nonne jam, hic ordo revelandi veritatem, potior & efficatior eſt, quam eſi proceſſus, qualem periunt Civiles leges?* Non hic periunt cauſæ aut jus alicujus, per mortem aut ob defectum teſtium, non hic producuntur teſtes ignoti, conducticii, paupereſ, vagi, inconſtantes, aut quorum cõditiones vel maliciæ ignorantur. Vicini ſunt teſtes iſti, de propriis vivere potentes famæ integræ, & opinionis illeſæ, non per partem in curiam ducti, ſed per officiarium nobilẽ & in-

thus to be ſpoiled of their goods and poſſeſſions. Is not this order now for the boulting out of the truth better and more effectuall, then the proceſſe which the Civill laws doe procure? Here no cauſe, for no mans right quaileth through death or for want of witneſſe: Here are not brought forth unknown witneſſes, hyred perſons, poor men, vagabonds unconſtant people, or ſuch, whoſe condition and naughtineſſe is unknown. Theſe witneſſes are neighbours able to live of their own, of good name and fame, of honeſt report, not brought into the Court by the party, but by a worſhipfull and indif-

ferent

ferent Officer chosen, and so compelled to come before the Judge. These know all, that the witnesses are able to depose, and they know also the constancy and unconstancy of the witnesses, and what report goeth upon them. And what will ye have more, Doubtlesse, there is nothing, that may disclose the truth of any doubt falling in contention, which can in any wise bee hidde from such Jurors, so that it bee possible for the same to come to mans knowledge.

differentē electi, & coram judice venire compulsi. Isti omnia sciunt, quę testes deponere norunt, & illi testium per ductorum agnoscunt constantias, incōstātiasq; & famā. Quid ultra? verè nihil est, quod veritatē dubii, de quo cōtendi poterit, detegere valebit, quod juratoribus talibus latere quomodo libet potest aut ignorari, dummodo possibile sit, illud venire posse in agnitionem humanā.

¶ Chap. 27. *Here he sheweth, how causes criminall, are determined in England.*

SEd quomodo in criminalib⁹ leges Angliæ cruãtur veritatem etiã rimere per neceſſariũ eſt, ut & in eis plenarie agnita ambarum legũ forma, quæ earũ efficacius latentem revelat veritatẽ certius agnoſcamus Si reus quiſpiam de *felonia aut proditione in Anglia rettatus, crimen ſuum coram judicibus dedicat*, mox vicecomes comitatus, ubi facinus illud commiſſum eſt, venire faciat coram eiſdem judicib⁹, viginti quatuor probos & legales homines de vicineto villæ, ubi illud factũ eſt, qui rettatum

BUt it is alſo neceſſary to diſcuſſe, how in matters criminall, the lawes of England doe fetch out the truth, that perfectly underſtanding the forme of both the Lawes, wee may the more certainly perceive and know, whether of them both doth more effectually diſcover the hidden truth. If any man accuſed of felony or treaſon in England? doe at his arraignment before the ſame Judges deny the offence, forthwith the Shriffe of the County, where the deed was done ſhall cauſe to come before the ſame Judges four and twenty good and lawfull men dwelling nigh to the village, where the fact was done, ſuch men as

to

o the party accuſed be nothing alleged, and ſuch as every of them hath an hundreth ſhillings of Lands and Revenues, to certifie the Judges upon the truth of the crime. Which at their appearance the partie accuſed may challenge, in like ſort as in actions reall may be done, as afore is deſcribed. And moreover the ſame partie in favour of his life may challenge five and thirty men ſuch as he moſt feareth: which upon his challenge ſhall be cancelled in the pannell: or ſhall be noted with ſuch markes, that they ſhall not paſſe upon him: though hee bee not able to ſhew any cauſe of his exillũ nulla affinitate attingunt, & quorũ quilibet C. e. habeat terræ & reddit⁹ ad certificãdum Judic' illos ſuper criminis illi⁹ veritate. Quibus cõparẽtib⁹, rettatus ille eos *calumpniare* poteſt, eadẽ forma, qua in actionib⁹ realib⁹ fieri debere ſuperi⁹ deſcribitur. Et inſuper re⁹ ipſe *in favorẽ vitæ ſuæ calũpniare poteſt* 35. *homines, quos ipſe maxime formidat*, qui ad ei⁹ calũpniã cancellabuntur in panello aut ſignis talib⁹ notabũtur, quod (ut verbis legis utar) illi ſuper eum nõ tranſibunt, licet ipſe nullã cauſã aſſignare ſciat ex-

ceptionis ſeu calumpniæ ſuæ. Quis tunc mori poſſet inique in Anglia *pro crimine*, cum tot juvamina habere ille poterit ob favorem vitę ſuę, & non niſi vicini ejus, probi & fideles homines, vers⁹ quos ipſe nullam habet matiriam exceptionis, cum condemnare poterunt? *Mallem revera viginti facinoroſos mortem pietate evadere, quam juſtum unum injuſte condemnari.* Nec tamen reum quēpiam ſub hac forma, reat⁹ ſui pęnā evadere poſſe ſuſpitandum eſt, dum ejus vita & mores timori deinceps

ception and challenge. **Who then can unjuſtly die in England for any criminall offence, ſeeing hee may have ſo many helps for the favour of his life, and that none may condemne him but his neighbours, good and lawfull men, againſt whom hee hath no matter of exception.** Indeed I would rather wiſh twenty evill doers to eſcape death through pittie, then one man to bee unjuſtly condemned. **And yet it is not to bee ſuſpected, that any offendour can under this form, eſcape the puniſhment of his offence, forasmuch as his life and converſation ſhall be afterward a terrour to them that have thus**

thus cleared him of the crime. In this kinde of proceeding there is no cruelty or extremity used, Neither can the innocent & anguilty person be hurt in his body or limmes: Wherefore he shall not stand in fear of the slander of his enemies, because he shall not be racked or tormented at their will and pleasure. Thus under this Law a man may passe his life with quietnesse and safetie, Judge you therefore, most noble Prince, whether of these laws ye had rather chuse, if you should live a private life.

erunt eis, qui cũ hic purgarũt a crimine. In hoc equidẽ processu, nihil est crudele, nihil in humanum, nec lædi potuit innocens in corpore aut membris suis: Quare nec formidabit ille calũpniã inimicorum ejus, quia nõ torquebitur ipse ad arbitriũ ipsorũ. Sub hac igitur lege vivere quietũ et securũ est. Judica ergo, *Princeps optime*, quę legũ harũ tibi electissima foret, si tu privatã spirares vitam,

¶ Chap. 28. *The Prince granteth the Laws of England to be more commodious for the subjects, then the Civill Laws in the case now disputed.*

CUi *Princeps*, arduũ ambiguũve, Cancellarie, non cõspicio, qd morosum me titubantẽve redderet in electione rei, quã interrogas. Nam quis non sub lege, qua securã ducere posset vitam, vivere potiùs eligeret quã sub lege tali, subqua inermem, indefensumq; se sẽper redderet sæ vitiæ omnium inimicorũ ejus? Vere tutus quisquam esse non poterit in corpore aut in bonis, quem inimicus ejus (in omni causa) cõvincere poterit, testibus duobus etiam ignoris, per ipsummet electis, per ductis.

VVhereunto the Prince answered and said: I see no hard or strange matter, good Chancellour, that should make mee doubtfull or dangerous in the election and choise of the thing that yee aske. For who would not rather choose to live under the Lawe, whereunder he might live in security, then under that Lawe, which would set him naked and succourlesse against the cruelty of his enemies? Verely, no man can be safe in body or goods, whom his adversarie may convince in everie cause, with two unknown witnesses of his own choosing and bringing forth.

And

And though a man be not compelled by their sayings to die, yet is he little relieved, that hath escaped death being shrunk in all his sinnews and limbs, and cast into a perpetual impotency of his bodie, and truly into such danger may the craft of a spitefull person bring any man that liveth under the Law, which here-while you speak of. But such mischief and inconvenience cannot be wrought by witnesses, that make their depositions in the presence of 12 credible men, neighbours to the deed, that is presently in question, and to the circumstances of the same: which also know the manners and conditions of the same wit-

Et licet quis mortē, per dicta eorum, subire nō cogatur, parum tamē relevatur ipse qui mortem evasit, contractione nervorū, & membrorum suorū, atq; corporis ejus lāguore perpetuo. Tali revera discrimini impellere potest inimici astutia omnē hominē qui sub lege degit, quā tu jam dudum explicasti, Sed tale malū operari nequiunt testes, qui depositiones suas faciūt, in præsētia duodecim fide dignorū virorū, facto vicinorum, de quo agitur, & circūstantiis ejus: qui & noscunt eorundē testi-

um

um mores, maxime ſi vicini ipſi fuerint noſcunt etiam, & ſi ipſi ſint credulitate digni. Omnes etiam duodecim tales latere omnino non poterit, quicquid actum eſt, per, aut inter vicinos eorum. Noſco namque ego certius, quæ jam aguntur hic in Barro, ubi ſum modo converſatus quam quæ in Anglia fiunt. Nec effugere poſſe puto notitiam probi viri ea, quæ agun ur, licet quodammodo occulte, prope domicilium ejus. Sed tamen cur prædicta lex Angliæ quæ tam frugi & optabilis eſt

neſſes, eſpecially if they be nigh dwellers, and know alſo whether they be men worthy to be credited or no. And further all thoſe twelve cannot be ignorant in thoſe things, that were done by and among their neighbours. For I know more certainely the things that are donne heere in Berry, where I am now remaining, then thoſe things that are done in England. Neither doe I think, that things can be kept from the knowledge of a good and honeſt man, being done nigh to his houſe, and almoſt under his noſe, be they never ſo ſecretly done. But yet I marvell much, why the foreſaid law of England,

which

which is so good and commodious, is not common to all the whole world.

non est toti mundo communis, vehementer admiror.

¶ Chap. 29. *Why inquestes are not made by Jurors of xii. men in other Realms, as well as in England.*

YOur highnesse came very young out of Englande (quod the Chancellour) so that the disposition and qualitie of that land is unknown unto you. Which if yee know, and should compare therewith the commodities and qualities of other Countries, you would nothing marvaile at these things, which now doe trouble your minde. Indeed England is so fertile and fruitfull, that comparing quantity to quantity,

CAncellarius, Juvenis recessisti (*Princeps*) ab Anglia, quo tibi ignota est dispositio, & qualitas terræ illius, quas si agnoveris, & cæterarum regionum emolumenta qualitatesq; eisdem comparaveris, non admirareris ea, quibus jam agitatur animus tuus Anglia sane tam fertilis est, quod quantitate ad quãtitatem comparata,

ipsa

ipſa cæteras omnes quaſi regiones exſuperat *ubertate fructuum*, etiam ſuũ ultro ipſa profert, vix induſtria hominis concitata. Nã *agri* ejus, *campi*, *ſaltus*, & *nemora*, tãta fœcunditate germina ebulliunt, ut inculta illa, ſæpe plus commodi afferant poſſeſſoribꝰ ſuis, quam arata licet fertiliſſima ipſa ſint *ſegitum*, & *bladorum*. Includuntur quoq; in terra illa *paſturarum arva*, *foſſatis*, & *ſepibus*, deſuper *arboribus* plantatis, quibus muniuntur à procellis & æſtu ſolis, eorum *greges* & *armenta*,

it ſurmounteth all other Lands in fruitfulneſſe, Yea, it bringeth forth fruit of it ſelf, ſcant prooked by mans induſtry and labour. For there the Lands, the Fields, the Groves, and the Woods, do ſo abounda[n]tly ſpring, that the ſame untilled doe commonly yeeld to their owners more profit then tilled, though elſe they be moſt fruitfull of Corn and Grain. There alſo are Fields of paſture incloſed with Hedges and Ditches, with Trees planted and growing upon the ſame, which are a defence to their herds of Sheep and Cattel, againſt ſtormes and heat of the Sunne,

And

And the pastures are commonly watered, so that Cattell shutte and closed therein, have no need of keeping, neither by day, nor by night For there be no Wolves, nor Beares, nor Lyons, Wherefore their Sheep lye night by night in the Fields unkept within their Folds wherewith their Land is manured. By the means whereof, the men of that Country are scant troubled with any painfull labour, Wherefore they live more spiritually, as did the ancient Fathers, which did rather choose to keep and feed Cattell, then to disturbe the quietnes of the mind with care of Husbandry.

ipiæque pasturæ ut plurimum irriguæ sunt quo infra earũ claustra recluſa animalia, custodia non egent, per diem, nec per noctem. Nam ibi lupi nõ sunt, ursi, nec Leones, quare de nocte oves conũ incustoditæ in campis recumbunt, in caulis, & ovilibus, quibus impinguantur terræ eorum, Unde homines patriæ illius, vix operis tudore gravãtur, quare spiritu ipsi magis vivunt, ut fecerunt patres antiqui, qui pacere malebãt greges quam animi quietã agri culturæ solicitudine turbare.

Et

Ex quib⁹, homines regionis istius, apti magis redduntur & dispositi ad discernendū in causis, quæ magni sunt examinis, quum sunt viri, qui telluris operib⁹ inhabitantes, ex ruris familiaritate mētis cōtrahunt ruditatem. Regio etiam illa, ita respersa, refertaq; est *possessoribus terrarum* & agrorum, quod in ea, villula tā parva reperiri non poterit, in qua non est, *miles, armiger*, vel paterfamilias, qualis ibidē *Franklain* vulgariter nuncupatur, magnis ditatus possessionibus, necnon libere tenentes alii,

And hereof it commeth, that men of this Countrie are more apt and fitte to discern in doubtfull causes of great examination and trial, then are men wholly given to molling in the ground: in whom that rurall exercise engendreth rudeness of wit and minde. Moreover the same Countrey is so filled and replenished with Landed men, that therein so small a thorp cannot bee found, wherein dwelleth not a Knight, an Esquire, or such a Houlholder, as is there commonly called a franklayne, enriched with great possessions. And also other Freeholders, and

and many Yeomen able for their livelihoods to make a Jury in form aforementioned. For there be in that Land divers Yeomen, which are able to dispende by the year above a hundred pounds, Wherefore the Juries afore declared, are there very oft made, specially in great matters, of Knights, Esquires, and others, whose possessions in the whole amounteth yeerely above the sum of five hundred marks.

Wherefore it cannot be thought, that such men can be suborned, or that they will be perjured, not onely for that they have before their eyes the fear of God, but also, for that they

& *Valecti* plurimi, suis patrimoniis sufficientes, ad faciendum juratã in forma prænotata. Sunt namque valecti diversi in regione illa, qui plusquam sexcenta scuta per annum expendere possunt, quo *juratæ* superius descriptæ, sæpissime in regione illa fiunt, præsertim in ingentibus causis de militibus, armigeris & aliis, quorum possessiones in universo excedunt duo millia scutorum per annũ. Quare cogitari nequit, tales subornari posse, vel perjurari velle, ne dum ob timorẽ Dei, sed & ob ho-

honorē ſuum conſervandum & vituperium, damnum quoque inde conſequutivū evitandum, etiam, ne eorum hęredes ipſorum lædantur infamia. Taliter, *filii regis*, diſpoſita, inhabitaque non ſunt aliqua alia mundi regna.

Nā licet in eis ſint viri magnæ potentiæ, magnarum opum & poſſeſſionum, non tamen eorum unus prope moratur ad alterum, ut in Anglia tanti moranturviri, nec tanta, ut ibi, hæreditatorum eſt copia & poſſidentium terras.

have a carefull regard to the preſervation of their Honours, and to the eſchewing of reproach, and dammage, thereupon enſuing, and alſo that their heires be not impeached thorough their infamie. After this manner, O mightie Prince, are none other Realms of the world diſpoſed and inhabited.

For though there be in them men of great power, of great riches, and poſſeſſions, yet they dwell not one nigh to another, as ſuch great men doe in England. Neither ſo many inheritours and poſſeſſors of Land are elſewhere, as in England.

For

for in a whole town of any other Country, it is hard to finde one man, which for his livelihood is able to bee received into a Jurie. For there, except it bee in Cities, and walled Townes, very few there bee, beside Noble men, that have any possessions of Lands or other immoveables. The Noble men also have there small store of pasture, And to labour in vineyards, or to put their hands to the plough, that is unfit for their estate and degree, And yet in Vineyards, and arable grounde, consisteth the substance of their possessions, saving onely a few fields next adjoyning to great ri-

Vix enim in villata una *regionum aliarum* reperiri poterit vir ad patrimonio sufficiens, ut in juratis ipse ponatur. Nam raró ibidem, aliqui præter nobiles reperiuntur, possessores agrorũ, aliorumve immobilium, extra civitates & muratas villas. *Nobiles* quoque ibidem, pasturarum copiam non habẽt, & vineas colere, aut aratro manus apponere statui eorũ non convenit, tamen in vineis & terris arabilibus cõsistit substãtia possessionũ eorum, *exceptis* solum pratis quibusdã, adjacẽtibus *magnis ri-*

pariis, & exceptis *boscis*, quorum pasturæ cõmunes sunt tenentibus, & vicinis suis. Quomodo tunc in regionibus talibus jurata fieri poterit, ex duodecim probis hominibus de vicineto, ubi factum aliquod in judicio deducitur, cum vicini dici non poterunt, qui tanta distantia distinguuntur? Vere remotos multum a facto duodecim juratos ibidem esse opportebit, postquam reus in regionibus illis, triginta quinq; (sine assignata causa) de propinquioribꝰ calumniaverit: quare aut

vers, and saving also certain Woodes, the pastures whereof are common to their tenants and neighbours. Howe then can a Jurye bee made in such Countries of twelve substantiall men, nigh adioyning to the place of any deed brought in judgement, seeing they cannot bee called neighbours that dwell so farre asunder. Truely twelve swozne men, there, must needes bee farre distant from the place of the deede, when the defendant in those Countries hath challenged thirty fve men of the nerte dwellers, without shewing any cause whye: Wherefore, in those landes a Jury must

must bee made, either of such, as dwell farre off from the place of the deede that is in controversie, and therefore cannot attaine to the knowledge of the truth thereof, or else it must be made of poore men, that be not ashamed of infamie, neither doe fear the losse of their goods, which they have not, They also blinded with rusticall and brute rudenesse, are not able to behold the clear brightnesse of the truth.

Marvelle not therefore most worthy Prince, if the Law, whereby the truth is sifted out in England, bee not frequented and used in other nations, for they are not able to make sufficient and

us multum remotis a facto, de quo contenditur, qui veritatem facti non agnoscunt, in regnis illis oportebit facere juratam, aut de pauperibus, quibus non est verecundia infamiæ, nec timor jacturæ bonorum suorum, cum ipsa non sint, ipsi etiam rusticitatis ruditate obcecati, veritatis claritatem nequeunt intueri.

Non igitur mireris, *Princeps*, si Lex, qua in Anglia veritas inquiritur, alias non pervagetur nationes, ipsæ namque, ut Anglia, facere neque-

unt ſufficientes cõ-
ſimilétque juratas.

like Iuries, as bee made in England.

¶ Chap. 30. *Here the Prince commendeth the Laws of England, of their proceeding by Juries.*

TUnc *Princeps*, *Comparationes odioſas eſſe* licet dixerimus, lex tamen Ciuilis, in comparatione per te facta, omni ſe purgabit à crimine: quia, licet ei Legem Angliæ tu prætuleris, odium inde ipſa non meretur, dum neque eam, neque cõditores ejus increpaſti: ſed ſolum *patriam*,

THough we have ſaid, (quoth the Prince) that compariſons are odious, yet the Ciuile Law in the compariſon by you made, hath cleared it ſelf from all blame: For, though you have proued the Law of England to be of more excellency then it, yet it deſerueth not thereby to bee odious, for ſo much as you have blamed neither it, nor the makers thereof: But have ſhewed the com-

countrie, where it ruleth to be the onely cause, why it doth not, in matters of doubt trie out the truth with so commendable a kinde of proceeding, as the Law of England doth. But as touching that the Lawe of England, in the case by you now discussed, is more fit and meet for that realm, then the Civill law, hereof wee may not doubt: Wherefore, wee are not desirous to change it for the Civill law: Howbeit this preeminence of the Law of England, proceedeth not of the fault of the other, for it is onely the fertilitie of England, that hath caused it to bee such as it is.

ubi illa regit, causam esse demonstrasti, quod non tam optabili processu, ut lex Angliæ, ipsa in dubiis elicit veritatē. Legem vero Angliæ, in casu jam per te disputato, accōmodatiorem esse regno illi, quam est lex Civilis, ambigere non finimur, quo, eam pro Civili commutare non appetimus: Sed tamen hęc Leges Angliæ præeminentia, ab alterius crimine non evenit, solum enim eam, Angliæ fertilitas sic causavit.

¶ Chap. 31. *The Prince doubteth, whether this proceeding by a Jury, be repugnant to Gods law, or not.*

SEd, licet non inſime, Cancellarie, nos delectet formæ, qua leges Angliæ in contentionibus revelant veritatem, tamen, an modus ille ſacræ repugnet ſcripturæ, vel non, paululum agitamus: Ait namque *Dominus* Phariſeis, Johan. viii *In lege veſtra ſcriptum eſt quia duorum hominum teſtimonium verum eſt*, & huic applaudens

BUt, though we be greatly deſirous to know the form, which the Lawes of England uſe in ſifting out the truth in matters of contention, yet whether the ſame law be contrary to holy Scripture or not, that is to us somewhat doubtfull: For our LORD ſaieth to the Phariſees, in the eight chapter of Saint Johns Goſpell: In your Law it is written, that the teſtimony of two men is true: And the LORD confirming

ming the ſame ſaith: I am one that beare witneſſe of my ſelfe, and the Father that ſent mee, beareth witneſſe of mee. Now Sir, the Phariſees were Jewes, ſo that it was all one to ſay: It is written in your Law, and it is written in Moyſes Lawe, which God gaue to the children of Iſraell by Moyſes.

Wherefore to gainſay this Lawe, is to denie Gods Lawe: Whereby it followeth, that if the Law of England ſwerue from this Law, it ſwerueth alſo from Gods Law, which in no wiſe may be contraried. It is written alſo in the eightenth Chapter of Saint Matthews goſpel,

Dominus inquit: *Ego ſum, qui teſtimonium perhibeo de me ipſo, & teſtimonium perhibet de me, qui miſit me, pater.* Phariſęi quippe Judęi erant unde idem erat diſcere, in lege veſtra ſcriptum eſt, & in lege Moyſaica (quæ à Domino, per Moyſen filiis Iſrael, prolata fuit) ſcriptum eſt Quare huic legi contraire, legi eſt divinæ refragari, quo ſequitur, qd lex Angliç, ſi ab hac lege diſcedat, a lege divina, cui reluctari non licet, ipſa diſcedit. Scribitur etiam Matth. xviii.

Quod dominus (loquens de correcti one fraterna) inter alia ſic ait: *Si autem non te audierit frater tuus, adhibe tecum adhuc unum aut duos, ut in ore duorum vel trium, ſtet omne verbum.* Si in ore duorum vel trium, Dominus omne verbum ſtatuerit, fruſtra plurium hominum quæritur in dubiis vere dictum Nemo enim poteſt, melius, aut aliud fundamentum ponere, quam poſuit dominus.

Hæc ſunt. Cancellarie, quæ me, de

Where the Lord, ſpeaking of brotherly admonition, among other things ſayeth thus: But if thy brother hear thee not, then take yet with thee one or two, that, in the mouth of two or three witneſſes, every matter may bee eſtabliſhed. If the Lord have appointed every matter to be eſtabliſhed in the mouth of two or three witneſſes, then it is in vain for to ſeek for the verdict of many men in maters of doubt. For no man is able to lay any other or better foundation then the Lord hath laid.

Theſe are the doubts, good Chauncellour which touching the proceeding of

of the law of England in the trial of matters doe somewhat trouble me. Wherefore, what answer may here unto be made, I would gladly learn of you.

legis Angliæ processu in probationibus, aliquantulum conturbant. Quare, quid his respondendum est à te, docerí deposco.

Chap. 32. *Here is shewed, that the proceeding by a Jurie, is not repugnant to the Law of God.*

THe Lawes of England & the Chancellor, are nothing at all repugnãt to thesethings that trouble you, most worthy Prince, though they in matters of doubt do somwhat otherwise boult out the truth. The law of the general Councel, wherein it is provided that Cardinals shal not be convicted of criminal offẽces, otherwise then by the depositiõ

CAncellariꝰ. Nõ, his, quibus turbaris, *Princeps*, contrariãtur leges Angliæ, licet aliter quodammodo ipsæ in dubiis eliciant veritatẽ. Quid duorum hominum testimonio obest *lex illa generalis Concilii*, qua cavetur, ut non nisi *duodecim testium depositione* Car-

cardinales de criminibus convincātur? Si verum est *duorum* testimonium, a fortiori, testimonium *duodecim* verum judicari debet, dicente juris regula: *Plus, semper in se continet, quod est minus.* Supererogationis meritum promitteba tur *stabulario*, si plus quam duos, quos recepit, denarios, ipse in vulnerati curationē erogasset. Non ne plusquam duos aut tres testes producere oportebit quempiam, qui absētem se fuisse probare nititur, tempore criminis sibi impositi, quod per duos aut tres testes

of twelve witnesses, is it any hindrance to the testimonie of two men? If the testimonie of two men be true, of more force must the testimonie of twelve men be judged true, according to a rule of the Law that saith: The more, ever containeth in [illegible], that which is less. The Inholder was promised to bee rewarded with an over-plus, if hee bestowed upon the cure of the wounded man, more then the two pence, which he received. A man that laboureth to prove, that hee was absent at the time of the offence, wherewith hee is charged, shall it not be needfull for him to bring forth more then two

two or three witnesses, when his adversary hath proved, or is ready to prove the same, by two or three witnesses? And so he, that travelleth to convince witnesses of perjury, must of necessity bring forth many moe then they were, so that the testimony of two or three men shall not ever be judged true: But that Law must thus be understood, that by a lesser number of witnesses then two, the truth, in matters doubtfull, ought not to bee searched for, as appeareth by Bernard assygning divers cases, wherein by the Lawes moe then three witnesses must needs be produced: As in some of them five, and in

adversari⁹ ejus probavit, vel probare parat⁹ est? Sic & qui testes de perjurio convincere satagit, multo illis plures, producere necesse habet, quo nō sēper ii. vel iii. hominū testimoniū verū esse judicabitur: sed intelligenda est lex illa, qd *minore testium numero quamvis* veritas in dubiis non debet exquiri, ut patet per *Bernardum* extra de testi. ca. licet in glossa ordinaria, ubi ipse assignat diversos casus, in quibus per leges, plures quam tres oportet producere, testes: Viz. in aliquibus eorum v.

&

& in aliquib' ſeptē: per duos etiā teſtes veritatē probari poſſe, eū non aliter ipſa pateret, utiq; reges Angliæ affirmāt. Nam ſi *quæ ſupra altum mare* extra corp' cujuſlibet comitatus regni illius fiant, quæ poſtmodū in placito *corā Admirallo* Angliæ deducantur, per teſtes illa juxta legē Angliæ ſāctiones probari debent. Conſimiliter quoq; corā cōſtabulario & mariſcallo Angliæ fieri ſolitū eſt de facto, qd in regno alio actum eſt, dūmodo ad juriſdictionē *curiæ Cōſtabularii*, cognitio ejus pertineat.

and in ſome ſeven. **Nor yet the Laws of** England **be not againſt it, but that the truth may be proved by two witneſſes, when it cannot otherwiſe be tried. For if** things be done upon the Sea **without the bodie of any County of that Realm, which afterward be brought in plea** before the Lord Admiral, **the ſame things by the decrees of the Laws of** England **muſt be proved by witneſſes. In like māner it hath bin accuſtomed to be done before the Conſtable and Marſhall of** England, **touching a fact that was done in another Realm, ſo that the hearing thereof appertaineth to the** Conſtables court.

More-

Moreover, in the Courts of certain Liberties in England where matters proceed by Law Merchant, contracts or bargains, made among Merchants in another realm, are proved by witnesses And this commeth to pass, because that in these cases there be no neighbours found, by whose oaths, Juries of twelve men may be made, as in contracts, and other cases, arising within the realm of England is accustomed to bee done. Likewise if a deed, wherein witnesses are named, be brought into the Kings Court, then proceis shall be made against those witnesses: and they together with twelve Jurors

Etiam & in curiis quarundam libertatum in Anglia, ubi per *legem Mercatoriã* proceditur, probant per testes, contractꝰ inter mercatores extra regnum factos. Quia in casibꝰ his nõ reperiuntur vicini, per quorum sacramenta, juratæ ex duodecim hominibꝰ fieri possunt, prout de contractibus & aliis casibus, infra regnum Angliæ emergentibus, est fieri consuetum. Similiter, si carta, in qua testes nominantur, deducatur in curia Regis, processus tunc fiet erga testes illos, ipsi quo-

quoq; recognoscet simul cũ xii. juratorib⁹ per eorũ sacramẽta utrũ carta illa sit factum ejus, cui⁹ supponitur, in non Quare, legẽ, qua testib⁹ veritas extorquetur, lex Angliæ nõ condẽnat, maxime eum *necessitas* id deposcat: quia & sic faciũt ipsæ leges Angliæ nedũ in casibus jã notatis, sed etiã in quibusdã casibus aliis quos nõ expedit hic notare. Sed per testes solũ lex ipsa nũquã litẽ dirimit, quæ per juratam xii. hominũ decidi poterit, cum sit modus iste ad veritatem eliciendã multo potior &

shall by their oathes recognise, whether the same bee his deed or no, whose it is supposed to bee. Wherefore the Lawe of England reproveth not the Law, which by witnesses tryeth out the truth, specially when necessity so requireth: For so doe the Lawes of England too, not onely in the cases now mentioned, but also in certain other cases, whereof here to make rehearsal it shall not be materiall. Howbeit this Law never determineth a controversie by witnesses onely, that may be determined by a Jury of xii. men: forsomuch as this way is much more availeable and effectuall for the tryall of the truth then

then is the forme of any other Lawes of the world, and further from the danger of corruption and subornation. Nor this forme of proceeding, cannot in any cause faile for want of witnesses, nor the testimonies of witnesses (if any bee) cannot choose but come to their due ende and effecte: Neither can such twelve men bee forsworne, but that for their offence they must suffer most sharpe punishment, and nevertheless the partie, by their depositions grieved, shall obtaine due remedye: And these things shall not bee done by the will and sayings of strange or unknown

efficatior, quam est forma aliquarũ aliarum legum orbis, & remotior a corruptionis & subornationis periculo. Nec potest hęc procedendi forma in causa aliqua, ob defectũ testiũ deperire, neq; testium (si qui fuerint) attestatio, effectũ debitum non sortiri, nec perjurari possunt duodecim homines hujusmodi, quin pro eorum crimine, ipsi acerbissime puniãtur, & nihilominus pars, per eorũ depositionẽ gravata, remediũ debitũ cõsequetur: ac, non fient hæc per extraneorum aut igno-

torum,

torū hominū arbitriū aut dictamē, sed perprobor̄ū, nobiliū & fide dignor̄ū, vicinor̄ū partib⁹, sacramēt̄ū, quib⁹ partes illæ nullā habē' causam calumpniæ aut diffidentiæ de eorum dicto. O quā horrendum & detestabile discrimē sæpe accidit, ex forma per depositionē testium procedendi! Nonne, si quis clandestinū contrahat matrimoniū, & postea corā testib⁹ mulierē aliā ipse affidaverit, cū eadem consummare matrimonium arctabitur in *foro contencioso*, & postea in *penitētiali foro* judicabitur ipse

men, but by the oaths of good, of worshipful, and of credible men, neighbours to the parties, in whom the same parties have no cause of challenge or mistrust, touching their Verdict. O how horrible and detestable dangers happen many times through the form of proceeding by witnesses! If a man make a priv⁹ contract of matrimonie, and afterward before witnesses, do betroth or assure himself to another woman, shall be not in the contentious court bee compelled to marry her, and also after that in the Penitential court, be judged to lie with the first, if he be duely required, and to do pennance, as oft as by his

his owne motion and procurement he lyeth with the second, though in both Courtes the Judge be one and the self same man. In this case, as it is written in Job, are not the sinewes of Leviathan perplexed and intricate? Ye for shame they are intricate indeed: For, this man can carnally company with neither of these two women, nor with any other, without punishment either by the contentious Court, or by the Penitentiall Court, Such a mischief, inconvenience, or danger, can never happen in any case by the way of proceeding by the Law of England, as not though Leviathan himself would labour to

ōcumbere cū prima, si debite requiratur, & penitere debet quoties ex actione propria cōcubuerit cū secūda, licet in utroq; foro judex fuerit homo unus & idē. Nonne in hoc casu, ut in *Iob* scribitur, *perplexi sunt testiculi Leviathā*? Proh pudor, vere perplexi sunt, nā, cum neutra mulierū harū, neq; cum alia, contrahens iste, extunc concumbet, sine animadversione in foro contendentium aut penitentium: quale malum, inconveniens, aut discrimen per modum & formā processus legis Anglię

impoſſibile eſt in caſu aliquo evenire, etiã ſi *Leviathã* ipſe ea generare nitatur. Nõne vides jã, *princeps clariſſime*, leges Angliæ tanto magis clareſcere, quanto eiſdem tu amplius reluctaris?

procure the ſame. Doe pee not nowe ſee, moſt noble Prince, that the more you obiect againſt the Lawes of England, the more worthy they appear?

¶ Chap. 33. *Wherefore, certaine Kings of England, have had no delight in their own Laws.*

PRinceps, video, inquit, & eas inter totius orbis jura (in caſu, quo tu jam ſudaſti) præfulgere conſidero, tamen progenitorum meorum Angliæ regum quoſdam audivimus, in legibus ſuis minime delectatos,

I See plainly, quod the Prince, that in the caſe wherein you have nowe travailed, they have the preeminence above all other Lawes of the worlde, yet wee have heard, that ſome of my progenitors, Kings of England, have not bin pleaſed with their owne Lawes, and have therefore gone about to bring

bring in the Civill lawes to the government of England, and to abolish their own Country Lawes. For what purpose and intent they so did, I much marvell.

jatagentes proinde, leges civiles ad Angliæ regimẽ inducere, & patrias leges repudiare fuisse conatos: horum revera consilium vehementer admiror.

¶ Chap. 34. *Here the Chancellour openeth the cause, which the Prince demandeth.*

YOu would nothing marvell hereat, quod the Chancellour, if you did deeply consider with your selfe, the cause of this intent. For you have heard afore, how that, among the Civill Lawes, that Maxime or rule is a sentence most notable, which thus lingeth: The Princes pleasure standeth in force of a Law: quite

CAncellarius, Nõ admirareris, Princeps, si causam hujʾ conaminis mẽte solicita pertractares. Audisti nam que superius, quomodo inter leges Civiles præcipua sententia est, maxima sive regula, illa quæ sic canit, *quod Principi placuit, legis habet vigo-*

rē, qualiter non ſanciunt leges Angliæ, dum nedum *regaliter*, ſed & *politice* rex ejuſdē dominatur in populum ſuum, quo ipſe, in *coronatione* ſua ad legis ſuæ obſervantiam aſtringitur ſacramento, quod reges quidem Angliæ ægre ferentes, putāres proinde ſe non libere dominari in ſubditos, ut faciunt reges regaliter tantum principantes, qui lege civili, & potiſſime prædicta legis illius maxima, regulant plebem ſuam, quo ipſi, ad eorum libitum, jura mutāt, nova condunt, pœnas

contrary to the decrees of the Laws of England, whereby the King thereof ruleth his people, not onely by Regall, but alſo by Politique government, Inſomuch that at any time of his coronation, hee is bound by an oath to the obſervance and keeping of his own Law, which thing ſome Kings of England not well brooking, as thinking that thereby they ſhould not freely govern their Subjects as other Kings doe, whoſe rule is onely regall, governing their people by their Civill Law, and chiefly by that ſorelaid Maxime of the ſame Law, whereby they at their pleaſure change Laws,

make

make new Laws, execute punishments, burden their subjects with charges: and also when they list, do determine controversies of suters, as pleaseth them. Wherefore, these your progenitours went about to cast off the yoke politique, that they also might likewise rule, or rather rage, over the people their subjects in regall wise onely: not considering that the power of both kings is equall, as in the foresaid Treatise of the Law of Nature is declared: and that to rule the people by government politique, is no yoke, but liberty, and great security, not onely to the subjects but also to the king himself: and sur-

intligunt & onera imponunt subditis suis, propriis quoque arbitriis, contẽdẽtium, cũ velint dirimũt lites. Quare moliti sunt ipsi progenitores tui hoc jugum politicũ abjicere, ut cõsimiliter & ipsi in subjectum populũ regaliter tantũ dominari, sed potius debacchari quãt: nõ attendentes, quod equalis est utriusq; Regis potẽtia, ut in prędicto *tractatu* de *Natura legis naturæ* docetur, & qd non jugũ sed libertas est politicé regere populũ, securitas quoque maxima nedum plebi, sed & ipsi re-

gi, allevario etiam non minima ſolicitudinis ſuæ. Quæ ut tibi apertius pateant, utriuſq; regiminis experientiam percunctare, & à regimine tantũ regali, qualiter Rex Frãciæ principatur in ſubditos ſuos, exordium ſumito: deinde à regalis & politici regiminis effectu, qualiter Rex Angliæ dominatur in ſibi ſubditos populos, experientiam quære.

ther no ſmall lightning or eaſement to his charge. And that this may appear more evident unto you, ponder and weigh the experience of both regiments, And begin with the King of France, peruſing after what ſort he ruleth his Subjects by Regall government alone: And then come to the effect of the joynt governance, regall and politick, examining by experience, how and after what manner, the King of England governeth his Subjects.

¶ Chap. 35. *The inconveniences that happen in the Realm of* France, *through Regal government alone.*

Call

CAll to remembrance, moſt worthy Prince, after what ſort you ſaw the wealthy Villages and Towns (as touching ſtore of Corne) in the Realm of France, while you were there a ſoiourner, peſtered with the Kings men at armes and their horſes, ſo that ſtaunt in any of the great towns there you could get any lodging: Whereof the inhabiters you learned, that theſe men, though they continue in one village a moneth or two, do not, nor will pay any thing at all, either for their own charges, or for the charges of their horſes. But which is worſe, they compelled the inhabitants of the Villages

REminiſcere (*princeps divine*) qualiter villas & oppida regni Fráciæ frugum opulentiſſimæ, dum ibidē peregrinabaris, cōſpexiſti, Regis terræ illi⁹ *hominibus ad arma, & eorum equis*, ita onuſta ut vix in eorum aliquib⁹quā magnis oppidis tu hoſpitari valebas: ubi ab incolis didiciſti, homines illos, licet in villa una per mēſem aut duos perhendinaverint, nihil prorſus, pro ſuis aut equorum ſuorum expenſis, ſolviſſe, aut ſolvere, velle, ſed quod pejus eſt, arctabant incolas villarum

& oppidorū, in quæ pecēderant, sibi de vinis, carnibus, & aliis, quibus indigebant, etiā cariorib⁹ necessariis quā ibi reperiebantur, à circumvicinis villatis, suis propriis sūptib⁹ providere. Et si quis sic facere renuebāt, cōcito fustib⁹ cæsi properè hoc agere cōpellebātur: ac demū cōsūptis, in villa una, victualib⁹, & calib⁹ & equorū probēdis, ad villā aliā homines illi properabāt eam cōsimiliter devastando, nec denarium unum pro aliquib⁹ necessariis suis, etiam aut concubinarum, suarū quas in magna co-

and town dwellers, whether they came, to provide of their own proper costes, out of the villages adjopning, wine and flesh for them, and other things that they needed, at dearer prices, then they might have bought the same at home. And if any refused thus to do, they were anon by plain Stafford Law forced to do it: And when they had spent all the victuals, fewell, and horsemeat, in one town, then those men went to another town, wasting the same in like manner, not paying one peny for any necessaries, either for themselves or else for their concubines and harlots, whereof they ever carried about with them great

great abundãce, nor for hosen or shoos, & other like, evẽ to the lest point or lace but they compelled the townsmẽ where they tarried to bear all their expẽses. And thus were all the villages & unwalled towns of the land used, so that there is not the least village there, free frõ this miserable callãity, but that it is once or twise every year beggered by this kind of pilling. Furthermore the King suffreth no man to eat salt within his kingdom, except he buy it of the king at such price, as pleaseth him to assesse. And if any poor man had rather eat his meat fresh then to buy salt so excessively dear, he is

pia secũ sẽper vehebãt, vel pro sotularib⁹, caligis, aliis hujusmodi, usq; ad minimã earum ligulã solverũt sed singulas suas qualescunq; expẽsas habitatores villarũ ubi moras fecerũt solvere coegerunt. Sitq; & factũ est in omnib⁹ villis & oppidis nõ muratis totius regionis illi⁹, ut nõ sit ibi villula una, expers de calamite ista, quæ non semel aut bis in anno, hac nephãda pressura depiletur. Præterea nõ paritur rex quenquam regni sui *salem edere*, quem non emat ab ipso Rege, precio, ejus solum arbitrio, assesso, Et si infulsum *pauper*, quivis mavult edere, quam salem excessivo,

præ-

præcio cõparare, mox cõpellitur ille tã ũ de ſale regis ad ejus preciũ mere, quãtũ congruet tot perſonis, quot ipſe in domo ſua fovet. Inſuper omnes regni illi' incolæ dant omni anno, regi ſuo, *quartã partẽ omniũ vinorũ* quæ ſibi accreſcũt & õnis *cargo quartũ denar ũ* precii vinorũ, quæ ipſe vẽdit, & ultra hæc cẽs *villæ & burgi* ſolvũt Regi annuatim, ingentes ſũms ſuper eos aſſeſſas, pro ſtipendiis hominũ ad arma, ſic quod armata regis, quę quã magna ſemper eſt, paſcatur annuatim de ſtipendiis ſuis per pannes villarũ, burgorũ & civitatum regni.

immediatly cõpelled to buy ſo much of the kings ſalt at the kings price, as ſhall ſuffice ſo many perſons as hee kæpeth in his houſe. Moreover all the inhabiters of that Realm, give yearly to the K. the iiij part of al the wines that their grounds beareth: & every Vintner the xth peny of the price of the wine that he ſelleth, & beſides all this, every village and borough paieth yearly to the K. great ſums of mony aſſeſſed upõ thẽ for the wages of men at arms, ſo that the charges of the kings army, wch is ever very great, is maintained by the poor people of the villages, boroughs, & townes of the realm. And

And yet moreover, every village findeth cōtinually ii. Cross-bows at the least, & some mo, withall furniture & habiliments, requisite for the kings service in his wars, as oft as it pleaseth him to muster thē which he doth very oft: And, these things not considered, other exceeding great tallages are yeerly assessed upon every village of the same realm to the kings use, wherof they are no yeer releſed. The people being wth these & divers other calamities, plagued and oppressed, do liue in great misery, drinking water daily. Neither do the inferior sort tast any other liquor, saving only at solemn feasts.

Et ultra hęc, quælibet villa sēper sustinet sagittarios duos ad minus, & aliquæ plures, omni apparatu, & abilimentis sufficientib' ad serviendum regi in guerris suis, quoties sibi libet eos summonere, qd & crebro facit: ac, hiis nō pōderatis, maxima *tallagia* alia, sunt omni anno assessa ad opus regis, supra quālibet villam ejusdem regni, de quibus nō uno anno ipsi alleviātur. Hiis & nōnullis aliis calamitatibus, plebs illa lacessita, in miseria nō minima vivit, aquam cotidie bibit, nec alium, nisi in solemnibus festis, plebeii gustant liquorem.

Froccis

Froccis sive collobitis de canabo admodum panni saccorũ regnatur. Pãno de lana, præterquã de vilissima, & hoc solum in tunicis suis subtus froccas illa non utuntur, neq; caligis nisi ad genua, discooperto residuo tibiarum. Mulieres eorum nudipedes sunt exceptis diebus festis, *carnes* non comedunt, mares aut fœminæ ibi sẽ præter laruũ baconis quo impinguant pulmentaria sua in minima quantitate. Carnes *assatas coctasve* alias ipsi non gustant, præterquam interdum de intestinis & capitibus animalium, pro nobilibus & mercatoribus occisorum:

Their shamowes are made of hemp, much like to sackcloth. Wollen cloth they wear none except it be very course, & that only in their coats under their said upper garments, neither use they any hosen, but frõ the knee upward: the residue of their legs go naked. Their women go barefoo saving on holidates neither men nor women eat any flesh there, but only lard of bacon wth a smal quantity whereof they sacten their pottage & broths. As for roste for sodden meat of flesh they taste none, except it be of the inwards somtimes and heads of beasts, that be killed for gentlemen and merchants.

But

But the men at armes, they devour and consume all their substance so, that they have scant the egges left to eat for special dainties. And if they fortune at any time to grow somewhat wealthy in substãce. so that any of them bee counted rich, he is by and by charged to the Kings Subsidie, more deeply then any of his neighbors, so that within short time he is made equall in poverty with the rest of his beggerly neighbours. And this, as I suppose is the state of the common and rascall people of that nation. But Gentlemen and Nobles are not so oppressed, & overcharged with exactions. But if any of them chance to be accused of any crime,

Sed gentes ad arma comedunt alitilia sua, ita ut vix ova eorum, ipsis relinquantur, pro summis vetcenda deliciis. Et si quid in opibus, eis aliquando accreverit, quo locuples eorum aliquis reputetur, concito ipse ad regis *subsidium*, plus vicinis suis cęteris onerctur, quo, ex tunc convicinis cæteris ipse æquabitur paupertate. Hæc, nĩ fallor, forma est status gentis plebanæ regionis illius. *Nobiles* tamen, non sic exactionibus opprimuntur. Sed si eorum aliquis calumniatus fuerit de

cri-

crimine, licet per inimicos ſuos nō ſemper coram judice ordinario ipſe convocari ſolet: Sed quam ſæpe, in regis camera, & alibi in privato loco quandoque vero ſolum per internūcios, ipſe inde aloqui vi us eſt, & mox ut *criminoſum* eum principis conſciētia, relatu aliorum judicaverit, in *ſacco* poſitus, abſque figura judicii, per præpoſti mariſcalorū miniſtros noctanter in flumine projectus, *ſubmergitur*, qualiter & mori audiviſti majorem multo numerum hominum, quam qui legitimo

though it be by his enemies, he is not ever wont to be cited or called before an ordinary Judge: But many times it hath been ſeen, that he hath in that behalf been talked with in the Kings Chamber, or elſewhere in ſome private place, and ſometime onely by a Purſevant or Meſſenger: And immediately as ſoon as the Princes conſcience hath, through the report of others, judged him guilty, hee is without any faſhion of judgement put in a Sacke, and in the night ſeaſon by the Marſhalls ſervants hurled into a River, and ſo drowned. After which ſort you have heard of many moe put to death, then that have been by ordi-

ordinary proceſſe of the Law condemned. Howbeit the Princes pleaſure, as ſay the Civill lawes, hath the force of a Lawe. Alſo, while you were abyding in France, and nigh to the ſame Kingdom, you heard of other great enormyties like unto theſe, and ſome much worſe then theſe deteſtable and damnable, done no otherwiſe but under the colour of that Law, which here to rehearſe would continue our talke too long a time. Now therefore, let us ſee, what the effects of the Law politique and Regall, which ſome of your progenitors would have changed into this civill: hath wrought in the

proceſſu juris convicti extiterũt. Sed tamẽ, qd principi placuit (juxta leges civiles) legis habet vigorem. Etiam & alia *enormia*, hiis ſimilia ac quædam hiis deteriora, dum in Francia & prope regnum illud converſatus es, audiſti non alio, quã legis illius, colore, deteſtabiliter damnabiliterq; perpetrata, quę hic inferere, noſtrum nimiũ dialogum protelaret: Quare, quid effect' legis politicæ & regalis, quam quidam progenitorũ tuorũ pro lege hac civili, cõmutare niſi ſunt, operatus eſt in regno

no Angliæ, a modo viſitem' ut utraque legum experientia doctus, quę earum tibi eligibilior ſit, ex earum effectibus elicere valeas, cũ (ut ſupra memoratum dicat Philoſophus, quod, *oppoſita, juxta ſe poſita, magis apparent.*

Realm of England, that you being inſtructed with the experience of both Laws, may the better by their effects iudge, whether of them ye ought rather to chooſe. Seeing the Philoſopher, as afore is rehearſed, doth ſay, that contraries laid together do more perfectly appear.

¶ Chap. 36. *The commodities that proceed of the joynt government, politique and regall, in the Realm of England.*

IN regno Angliæ, *nullus poſſidendi-nat in alterius domo*, invito domino, ſi non in *hoſpitiis publicis*, ubi tunc pro omnibus, quę ibidem expendit, ipſe plena-

WIthin the Realm of England, no man ſojorneth in another mans houſe, without the love & the leave of the good man of the ſame houſe: ſaving in common Innes, where before his departure thence, he ſhall fully ſatisfie

satisfie and pay for all his charges there: Neither shall he escape unpunished whosoever he be, that taketh another mans goods without the good will of the owner thereof, Neither is it unlawful for any man in that Realm, to provide and store himself of salt, and other merchandises, or wares, at his own will and pleasure of any man that selleth the same. Howbeit, the King, though the owners would say nay, may by his Officers take necessaries for his house, a reasonable price, to be assessed by the discretions of the Constables of the towns: Nevertheless, he is bound by the Laws to pay therefore, either presently in hand, or else

ne tolvet ante ejus abinde recessum: nec impune quisq; *bona alterius capit sine voluntate proprietarii eorundem*, neq; in Regno illo, impeditur aliquis, ubi de sale, aut quibuscunque mercimoniis aliis ad proprium arbitrium, & de quocunq; venditore, provideri. *Rex* tamen, necessaria domus suæ *per rationabile precium*, juxta constabulariorum villarum discretiones assidendum, invitis possessoribus, per officiarios suos capere potest: sed nihilominus precium illud in manibus vel ad

diē per majores officiarios domus ſuæ limitādū *ſolvere* per leges ſuas obnoxi⁹ ē: quia nulli⁹ ſubditorū ſuorum bona juxta leges illas, ipſe deripere poteſt ſine ſatisfactione debita pro eiſdem. Neq; rex ibidē, per ſe, aut miniſtros ſuos *tallagia*, *ſubſidia*, aut quævis onera alia, imponit legiis ſuis, aut leges eorū mutat, vel novas condit, *ſine conceſſione* vel aſſenſu toti⁹ regni ſui, in *parliamento* ſuo expreſſo. Quare incola ōnis regni illi⁹ fructub⁹ quos ſibi parit terra ſua, & quos gignit pec⁹ ei⁹, emolumētis quoq; omat a day to bee limitted and ſet by the higher Officers of his houſe: For by his Laws hee may take away none of his Subjects goods, without due ſatisfaction for the ſame. Neither doth the King there, either by himſelf, or by his Servants and Officers levie upon his ſubjects, Tallages, Subſidies, or any other burdens, or alter their lawes, or make new Lawes, without the expreſſe conſent and agreement of his whole Realm in his Parliament. Wherefore every inhabiter of that Realm, uſeth and enjoyeth at his pleaſure, all the fruits that his land or cattel beareth, with all the profits and commodities, which

which by his own travell, or by the labour of others, he gaineth by land or by water: not hindered by the injury or wrong detainment of any man, but that he shall be allowed a reasonable recompence: And hereby it cometh to passe, that the men of that Land are rich, having aboundance of Gold and Silver, and other things necessary for the maintenance of mans life. They drink no water, unlesse it be so, that some for devotion and upon a zeale of pennance, do abstain from other drink. They eat plentifully of all kinds of flesh and fish. They weare fine woollen cloth in all their apparell,

nib⁹, quę industria propria, vel aliena, ipse terrā mariq; lucratur, ad libitū proprīū utitur, nulli⁹ per pedit⁹ injuria vel rapina, quin ad min⁹ in de debitas consequitur emēdas: unde in habitātes terrā illā, locupletes sūt abūdātes auro & largēto & cunctis necessariis vitæ. Aquā ipsi non bibūt, nisi q; ob devotionis & penitēciæ Zelū, aliqādo ab aliis potub⁹ se abstinēt ōni genere *carniū* & *piscuū*, ipsi in copia viscūtur, quib⁹ patria illa nō modice est refertur, pānis de lanis bonis ipsi induuntur in omnibus *operimentis* suis,

etiam abundant in *lectiſterniis*, & quo libet ſuppellectili cui lana cõgruit, in omnibus domibus ſuis, necnõ opulenti ipſi ſunt in omnibus *huſtilimentis* domus, neceſſariis culturæ & omnibus quæ ad quietam, & felicem vitam exiguntur ſecundum ſtatus ſuos. Nec in placitũ ipſi ducuntur, niſi coram judicibus ordinariis, ubi illi per leges terræ juſte tractantur. Nec allocuti ſive implacitati ſunt de mobilibus aut poſſeſſionibus ſuis, vel arrettati de crimine aliquo, qualitercunq; magno &

They have alſo abondance of bed-coverings in their Houſes, and of all other woollen ſtuffe, They have great ſtoze of all huſtlements and implements of houſehold. They are plentifully furnithed with all inſtruments of huſbandry, and all other things, that are requiſite to the accomplithment of a quiet and wealthy life, accozding to their eſtates and degrées. Neither are they ſued in the Law, but only befoze ozdinary Judges, where by the laws of the land they are juſtly intreated. Neither are they arreſted oz impleaded foz their moveables oz poſſeſſions, oz arraigned of any offence criminal, be it never ſo gzeat and out-

outragious, but after the Lawes of the Land, and before the Judges aforesaid. And these are the fruits, which government politick and regall conjoyned, doth bear and bring forth: Whereof now appear evidently unto you the experiences of the effects of the Law which some of your progenitors travelled to abolish. Before also you saw plainly the effects of the other Law, which they with such earnest endeavour laboured to advance and place in stead of this Law so that by the fruits of them both, you may know what they are: And did not ambition, riot, and wanton lust, which your said

enormi, nisi *secundum leges terræ illius, & coram Judicibus* antedictis. Et hii sunt *fructus*, quos parit regimen *politicum & regale*: Ex quibus tibi jam apparent experientiæ effectus legis, quam quidam progenitorum tuorum abjicere conati sunt.

Superius quoque tibi apparent effectus legis alterius, quam tanto zelo, loco legis istius, ipsi nisi sunt inducere, ut ex fructibus earum tu agnoscas eas: Et, nonne ambitio, luxus, & libido quos perdicti

progenitores tui, regni bono præferebant, eos ad hoc commercium concitabant? Conſidera igitur, *Princeps optime*, & jam alia, quę ſequentur.

progenitors eſteemed above the wealth of the Realm, move them to this alteration? Conſider therefore, moſt worthy Prince, and that earneſtly this that followeth.

¶ Chap. 37. *A compariſon of worthineſſe of both the regiments.*

SAnctus *Thomas* in libro, quem Regi Cipri *de regimine principiũ* ſcripſit, dicit: *quod Rex datur propter regnum, & non regnum propter Regem*, quo omnis poteſtas regia referri debet ad bonum regni ſui, quod effectivé conſiſtit, in defenſione

SAint Thomas in his book which he wrote to the king of Cyprus, of the regiment of Princes, ſaith, that the King is given for the kingdom, and not the kingdom for the King, Whereupon it followeth, that all kingly power muſt be applyed to the wealth of his kingdom, Which thing in effect conſiſteth, in the defence

defence thereof from foreign invasions, and in the maintenance of his subjects, and their goods, from the injuries and extortions of the inhabitants of the same. Wherefore, that king, which is not able to perform these things, must of necessitie be judged impotent and weak. But if he be so overcome of his own affections and lusts, or so oppressed with poverty, that he can not withhold his hands from the pilling of his subjects, whereby himself impoverisheth them, and suffereth them not to live and to be sustained upon their own substances: how much more weak or feeble is he in this

ejusdem ab exterorum incursibus, & in tuitione regnicolarum, & bonorum suorum ab indigenarum injuriis & rapinis. Quare, Rex, qui hęc peragere nequit, impotens est necessario judicandus. Sed si ipse, passionibus propriis, aut penuria, ita oppressus est, quod manus suas cohibere nequit à depilatione subditorum suorum, quo ipsemet eos depauperat, nec vivere finit & sustentari propriis substantiis suis: quanto tunc impotentior

ille judicandus eſt, quam ſi eos defendere, ipſe non ſufficeret erga aliorum injurias? Revera, Rex talis, nedum impotens, ſed & ipſa impotentia, dicendus eſt: & non liber judicari poteſt, tantis impotentiæ nexubus vinculatus. Ergo, Rex liber & potens eſt, qui incolas ſuos erga exteros, & indigenas eorum quoque bona & facultates, nedum erga vicinorum & concivium rapinas defendere ſufficit, ſed erga propriam oppreſſionem, & rapinam,

reſpect to be judged, then if he were not able to defend them againſt the injuries of others: Truely, ſuch a King may well be called, not onely feeble, but even very feebleneſſe it ſelf: nor is not to bee judged free, being tied with ſo many bands of feebleneſſe On the other ſide, that King is free and of might, that is able to defend his ſubiects, as well againſt ſtrangers, as againſt his own people: and alſo their goods and poſſeſſions, not onely from the violent and unlawfull invaſions of their own countrymen and neighbours, but alſo from his own oppreſſion and extortion, though

though such wilful lusts and necessities do move him to the contrary. For who can bee more mightie or more free, then he, that is able to conquer and subdue, not onely others, but also himself? Which thing a King, whose governance is politick, can doe and ever doth. Thus, most worthy Prince, it appeareth unto you by the effect of experience, that your progenitors, which were thus minded to renounce their politick government, could not thereby not onely not obtain the might and power, which they wished, that is to say, increase thereof, but rather they should have endangered, and greatly hazarded, the wealth

licet sibi passiones necessitatesque hujusmodi reluctentur. *Quis enim potentior liberiorve esse potest, quam qui, non solum alios: sed & se ipsum sufficit debellare*? quod potest, & semper facit, Rex *politice* regens populum suum. Quare experientiæ effectu tibi constat, *princeps*, progenitores tuos, qui sic politicum regimen abjicere satagerunt, non solum in hoc non potuisse nanciscipotentiã, quam optabant, videlicet ampliorem, sed & sui bonum, similiter & bonum Regni sui, per hoc,

hoc, ipsi discrimini exposuissent, & periculo grã stori. Tamen hæc quæ jã de experientiæ effectu practicata, potentiam regis, regaliter tantum præsidẽtis, exprobrare vidẽtur non ex legis suæ defectu processerunt, sed ex incuria negligẽtiaque taliter principãtis. Quare ipsa, dignitatẽ illã potentia non minuunt, à dignitate regis politice regulãtis, quos paris esse potentiæ, in prædicto *tractatu de Natura legis Naturæ*, luculenter ostendi. Sed potentiam regis regaliter tantum principantis difficis

as well of themselves, as also of their Kingdome. Notwithstanding these things now practised, which, as touching the effect of experience, doe seem to blemish the power of a king ruling all alone regally, never proceeded of the default of their law, but of the careles demeanour, and negligent loosness of such a Ruler. Wherefore, that dignity is not hereby in power imbased under the dignitie of a politick Governour, which both, in my foresaid treatise of the nature of the Law of nature, I have plainly prooved to be in power equal. But the premises do most evidently declare it to be a matter of much more difficultie for a king whose

whose rule is only regal, to exercise his power, and that both he and his people, stand in much lesse securitie, and therefore it were not to be wished of a wise king, to change a politick regiment into that government, which is onely regall. And according to this, the foresaid Saint Thomas wisheth that all the kingdomes of the world were ruled by politick governance.

rioris esse exercitii, as minoris securitatis sibi & populo suo, illa clarissime ja demonstrant, quo optabile non foret regi prudenti, regimen politicum pro tantum regali commutare. Unde & sanctus *Thomas* supradict⁹ optare cẽsetur, ut omnia mundi regna politice regerentur.

¶ Chap. 38. *The Prince breaketh the Chancelour of his tale.*

BEar with me, I beseech you good Chancellour, quod the Prince,

TUnc *Princeps*, parce, obsecro, Cancellarie, quod

quod te ad tantam à propoſito tuo digreſſionem compuli quęſtionibus meis, mihi namque perutilia ſunt, quæ hac occaſione exaraſti, licet te paũper retardaverint à meta inſtitutionis tuæ ad quam ut tu jam celerius properes, flagito, & primo ut aliquos alios caſus, in quibus, legũ Angliæ,& Civilũ diſcrepant ſentẽtiæ, ut promiſiſti & cœpiſti, mihi enarres.

in that with my queſtions I have drawn you ſo far from your purpoſe: For, the things which by this occaſion you have diſcuſſed, are to me right profitable, though they have ſomewhat ſtaped you, and pulled you backe from the end of your intent, Whereunto I pray you now make haſte: and firſt as you promiſed, and as you have begun, open unto me ſome other caſes wherein the ſentences of the laws of England, and of the Civil laws, do diſagree.

¶ Chap. 39. *The ſecond Caſe, wherein the Civil Laws, and the Laws of England, diſagree in their judgements.*

Accor

According to your requeſt, moſt noble Prince (quoth the Chancellour) I will open unto you certain other caſes, wherein the ſaid Laws diſagree. Howbeit whether of the ſame Laws in their judgements, excelleth the other, that will I leave to your own determination.

The Civil Law doth legittimate the childe born before matrimony, as well as that which is born after: and giveth unto it ſucceſſion in the Parents inheritance: But to the childe born out of matrimony, the Law of England alloweth no ſucceſſion, affirming it to be naturall only, and not lawfull. The Civilians in this caſe, advance their Law,

Cancellarius.

Quoidã caſus alios, in quibus diſſentiunt Leges prędictæ, ut petis *princeps*, detegere conabor. Sed tamen quæ legũ earũ præſtãtior ſit in judiciis tuis, non meo ſed arbitratui tuo relinquam. *Prolem ante matrimonium natam, ita ut poſt, legitimã, lex civilis, & ſuccedere facit in hæreditate parentum*: ſed prolem, quam matrimoniũ non parit, *ſuccedere non ſinit lex Anglorum*, naturalẽ tantũ eam eſſe, & non legitimam proclamans. Civiliſtæ in caſu hoc, legẽ eorum extollunt,

quia

quia incitamẽtũ eã eſſe dicunt, quo matrimonii ſacramẽto ceſſet peccatum, per quod alias duorũ animę interirẽt: præſumendum quoque eſſe dicunt, tales fuiſſe contrahentium animos in primo eorum concubitu, quales eſſe demonſtrat ſubſequens ſacramentũ. Eccleſia etiã, fœtus hujuſmodi habet pro legitimis, hæc ni fallor, tria fulcimenta ſunt majora, quibus ipſi approbãt, defẽdũtq; legẽ ſuam. Ad quæ, ſic reſpondent *legis Angliæ periti*: primo dicunt quod *peccatũ primi concubitus*, in caſu propoſito, alledging that by mean thereof, the ſacrament of ſtate of matrimonie coming in place, extinguiſheth the former ſinne, whereby elſe the ſoules of two perſons ſhould have periſhed: And it is to be preſumed, ſay they, that they were at their firſt copulation both ſo minded, as the ſacrament enſuing afterward declareth. The Church alſo accepteth ſuch children for legitimate. Theſe I trow, are the three ſtrongeſt reaſons, whereby they maintain and defend their Law. Which are thus anſwered by the Lawyers of England: Firſt, they ſay, that the ſin of the firſt carnal action, in the caſe propounded, is not purged by the ma-

matrimonia entuing, though by the worthines therof the sinners punishment is somewhat abated. They say also, that they which thus do sin, are so much the lesse repentant therefore, in as much as they perceive the Laws to favour and bear with such transgressors: And upō this consideration, they are made the readier to commit sin: thereby breaking the commandement both of Gods and of the Church. Wherfore this Law both not only participate with the offence of sinners, but also swerveth from the nature of a good Law. For as much as a Law is a holy stablishment, commanding things honest, and forbidding the contrary:

nō purgatur per subsequens matrimonium, licet ejus merito delinquentium quodam modo minuatur pœna. Dicunt etiā qd *peccati illius cōscii, tāto minus inde pœnitent*, quo leges tā sgressoribus illis favere considerant: Quali etiam consideratione, *promptiores ipsi redduntur ad cōmittendū peccatum*, per qd, nedum Dei, sed & ecclesiæ præcepta negligūt. Unde lex illa, nedum delinquentiū participat culpā, sed & legis bonæ naturā ipsa declinat: cum lex sit *sanctio sancta, jubens honesta, & prohibens contraria*:

qua-

qualia ipsa nō prohibet, *sed potius ad inhonesta animos labentium invitat.* Nec vallari potest lex ista per hoc, qd eccl-ia fœtus hujusmodi pro legitimis habet Pia nāq; mater illa, in quā plurimis dispensat, quæ fieri ipsa non cōcedit, dispensativa enim laxavit Apostol⁹ virginitatis frena qd cōsulere noluit cū oēs ipse voluerit, ut se virgines permansisse Et abnit, ut mater tanta, a filiis suis in casu isto pietatem suā cohiberet dum sæpe ipti, etiā legis hujus civilis fomento cōcitati, inciuūt in peccatum.

Which this Law doth not, but rather allureth the minds of sinners to dishonesty. Neither can it be any defence to this Law, that the Church accepteth such Children for legitimate. For that loving mother dispenseth in many things, which she licenceth to be done, And it was by way of dispensation, that the Apostle setteth Virgins at liberty, whereunto he would not counsell them, rather wishing all to continue Virgins like himself And God forbid, that so great a mother, should in this case withdraw her tender love from her children, which by the intisement of this Law do many times fall into sin.

And

And by the matrimony ensuing, The Church is informed, that the parties so marrying are penitent and sorry for the offence passed, and are willing in time to come, through matrimony, to live continent. But the Law of England in this case, worketh a much contrary effect. For it provoketh not to sin, nor cherisheth or maintaineth sinners, but putteth them in fear, and to keep them from sin threateneth punishment: For the wantonnesse of the flesh hath no need of allurement, but rather of discouragement: because the lustes of the flesh are wanton, and almost untameable. And forasmuch as it is impossible for man to live ever in himself,

Et per matrimonium subsequens docetur Ecclesia, contrahentes pœnitere de preterito, & de futuro per matrimonium se velle cohibere, Sed *longè alium*, in hoc casu, *lex Angliæ effectum operatur, dum ipsa non concitat ad peccatum, neque peccantes Jovet, sed terret eos, & ne peccent, minatur pœnas*: carnis etenim illicebræ fomento non egent, egent verò frœnis, quia irritamẽta carnis lasciva & quasi infatigabilia sunt. Et homo, quum individuo perpetuari nequit, perpetuari

naturaliter appetit in ſpecie ſua, quia omne, qd vivit, aſſimilari cupit cauſæ primæ, quæ perpetua eſt & æterna. Unde ſit, quod *plus delectatur homo in ſenſu tactus, quo ſervatur ſpecies ejº, quã in ſenſu guſtus*, quo conſervatur individuum. Quare *Noe*, ulciſcens in filium qui ejus pudenda revelavit, nepoti ſuo, filio delinquentis, maledixit, ut inde plus cruciaretur reus, quã proprio poſſit incõmodo: quære *lex, quæ vindicat in progeniem delinquentis, penalius prohibet peccatum quam quæ ſolum delinquen-*

he naturally coveteth to live ever in his like, becauſe every living thing deſireth to be like the firſt and chief cauſe, which is perpetuall & everlaſting. And hereof it cõeth, that man hath more delight & pleaſure in the ſenſe of feeling, wherby his kind is preſerved, then in the ſenſe of taſte, which preſerveth only the particular man. Wherefore Noe, executing vengeance upon his ſon which uncovered his pryvities, did curſe his Nephew the offenders child, that thereby the offender might be more grieved then with his own miſhap: Wherefore the Law that puniſheth the offenders iſſue, doth more penally prohibite ſin, then that, which plagueth but

but the offender alone. Wherby it may easily be considered with what zeal the Law of England abhorreth unlawfull conjunctions, which doth not onely judge the childe so gotten to be illegitimate, but also prohibiteth it to succeed in the parents inheritacee. Is not this law then chaste and pure? And doth it not more forceably and more earnestly suppresse sin, then the foresaid civill Law, which winketh at the sin of lechery, and leaveth it unpunished?

tem flagellat. Ex quibus cõsiderare licet, quãto Zelo lex Anglię illicitos prosequitur concubitus, dũ ex eis editã prolẽ, ipsã, nedum judicat non esse legittimã, sed & succedere prohibet in patrimonio parentũ. Nũ quid tunc, lex ista casta non est? & non fortius firmiusq; repellit peccatũ, quam facit lex prædicta civilis, quæ cito, & quasi inultum luxurię crimen remittit?

¶ Chap. 40. *Speciall causes, why base born children, are not legittimate in England by matrimony ensuing.*

MOreover, the Civil laws say, that your

PRęterea *leges civiles* dicũt, *filiũ*

naturalem tuum eſſe filium populi, de quo metrit⁹ quidā ſic ait. *Cui pater eſt populus, pater eſt ſibi, nullus, & omnis. Cui pater eſt populus, non habit ipſe patrem.*

Et dum proles talis patrem non habuit tempore nativitatis ſuæ, quomodo ex poſtfacto ipſe patrem nāſciſci poterit, natura non novit: quò, ſi ex fornicatoribus duob⁹, mulier una filios peperit duos, quā poſtea, unus ex concubinariis illis ducat in uxorē, quis ex filiis his duob⁹, per matrimonium illud legittimatur? *Opinio ſuadere poteſt,*

naturall or baſtard ſon is the ſon of the people. Whereof a certain Petrittan writeth in this wiſe.

To whom the people father is, to him is father none and all:

To whom the people father is, well fatherleſs we may him call.

And while ſuch a childe had no Father at the time of his birth, ſurely nature knoweth not how he could afterward come by a Father: For, if one woman ſhould bear two children of two Fornicatours, and the one of them ſhould afterward marry her: Whether of theſe two children ſhould by this marriage be legittimate? Opinion may ſomewhat perſwade:

but

but reaſon cannot finde: ſeeing the time was once, when both theſe children, being judged the children of the people, did not know their fathers. It were therefore unreaſonable, that a childe afterward born in the ſame wedlock, whoſe generation cannot be unknown, ſhould be diſherited, and that a child which knoweth no father, ſhould be heire to the father and mother of the other, ſpecially in the realm of England, where the eldeſt ſon onely injoyeth the fathers inheritance, And an indifferent Judge would think it no leſſe unreaſonable, that a baſe borne childe ſhould bee equally matched with a lawfull begotten child in

ſed ratio reperire nequit, dum ambo filii illi populi fœtus judicati, ſemel parentes ignorabant. Incõſonum propterea videretur, quod in matrimonio illo extunc ab eadẽ muliere natus, cujus generatio ignorari nõ poterit, expers eſſet hæreditatis, & filius neſcius genitoris ſui ſuccederet patri & matri ejus, maximé infra regnũ *Angliæ*, ubi *filius ſenior ſolus ſuccedit in hæreditate paterna*, & non minus incõgruum eſſe ſentiret abiter æquus, ſi filii ex ſtupro, æqualiter participaret cum filio ex legitimo thoro,

hereditatem, quæ jure civili intermasculos dividenda est. Nam *sanctus Augustinus* xvi. *lib. de Civitate Dei*, hæc scribit: *Abraham omnem censum suum dedit Isaac filio suo, filiis autem concubinarum dedit donatiunes*: Ex quo videtur innui, qd spurijs non debetur hereditas, sed victus necessitas. Hæc ille. Sub nomine vero spurii, denotat *Augustinus*, omnem sortū illegittimū, qualiter & sepius facit scriptura sacra, quæ neminem vocat bastardum. Ecce, differentiam non minimam sentit *Augu-*

the inheritance, which by the Civil Laws can be divided but onely among male children. For Saint Augustine in the xvi. book de Civitate Dei writeth thus: Abraham gave all his substance to his son Isaac: and to the sons of his concubines he gave gifts: Whereupon seemeth to be meant, that to bastard children there is no inheritance due, but onely a necessary living. Thus saith he. And under the name of a bastard childe, S. Augustine understandeth all unlawfull issues, and so doth holy Scripture also in divers places, calling none by the name of a bastard. Loe, Saint Augustine thinketh no small difference to be,

and

and so thinketh Abraham too, between the succession of a bastard, and of a son lawfully begotten. Yea, holy Scripture reprehendeth all unlawfull children under this Metaphor, saying, bastard slips shall take no deep root, nor lay any fast foundation, in the fourth chapter of the book of Wisdom. The Church also reproveth the same, in that it admitteth them not to holy orders. And if so be, that the Church do dispense with such a one, yet it permitteth not him to have any dignity or preeminence in the Church. Wherefore it is convenient, that mans law in the benefit of succession, should cut them short,

linus, sentit & *Abrabam*, inter successionem spurii, & filii ex legittimo concubitu. Cæterum, omnes filios illegittimos reprehendit *Scriptura sacra*, sub Metaphora hac, dicens, *spuria vitulamina non dabunt radices altas, nec stabile fundamentum collocabunt*, Sapientiæ iiii. Reprehendit & ecclesia, quæ eos à sacris repellit ordinibus, & si cum tali dispensaverit, non cum tamē permittit dignitate præesse in ecclesia Dei congruit, Id circo legi hominum in successionis beneficio, minuere,

quos eccleſia indignos judicat ſacro ordine, & quos ipſa repellit ab omni prælatia: ipſos etiã quos Scriptura ſacra in natalibus, minoratos judicat a legittimé procreatis. *Gedeon* autem *viro*rũ *fortiſſimus*, lxx. filios in matrimonio legitur procreaſſe, & nõ niſi unum ſolum habuiſſe ex cõcubina, filius tamen ipſe concubinę, omnes filios illos legittimos nequiter peremit, excepto uno ſolo Judicũ ix. Quo in notho uno, plus malitiæ fuiſſe deprehẽditur, quã in filiis legitimis lxix. Tritũ etenim proverbium

whom the Church judgeth unworthy to be receiued in holy orders, and reiecteth from all prelacy: yea, whom holy Scripture iudgeth, as touching their birth, much inferiour to them that be lawfully begotten. Wee reade, that Gedeon the puiſſant begat threeſcore and ten ſons in wedlock, and but one onely out of wedlock, yet this miſbegotten childe wickedly ſlew all thoſe lawfully begotten children, one onely excepted, Iudges the ninth chapter: Whereby it is perceiued, that there was more wickednelle in one Baſtard childe, then in lxix. lawfull ſons. For it is a common ſaying: If a baſtard

stard be good, that cometh to him by chance, that is to wit, by speciall grace, but if he be evill, that cometh to him by nature. For it is thought, that the base child draweth a certain corruption and stain from the sin of his parents, without his own fault, as all we have received of the sin of our first parents, much infection, though not so much, Howbeit the blemish, which bastards by their generation do receive, much differeth from that wherein lawfull children are born. For their conception is wrought by the mutuall sinfull lust of both parents, which in the lawfull and chaste copulation of married couples taketh no place. The

est, *si bonus est bastardus hoc ei venit a casu, videlicet gratia speciali, si autem malus ipse fuerit, hoc sibi accidit a natura.* Corruptionem namq; & maculam quandam censetur illegitimus partus contrahere a peccato genitorum suorum sine culpa ; is ut maximã nos cõtraximus omnes a crimine primorũ parentum, licet non tantam: aliam tamẽ nothi quam legittimi, contrahunt maculam ex genitura sua, eorũ namq; generationẽ mutua utriusq; parẽtis libido culpabilis operatur, qualiter in legitimis castisq; amplexibus

ibus conjugatorum ipſa nō ſolet debachari, mutuum ſane & cōmune eſt peccatum taliter fornicātium, quo primo ſimilatum peccato magis ſevit in fetū, quam peccatum aliter ſolitarie q; peccātiū ut ex inde natꝰ, potiꝰ peccati filiꝰ dici mereatur, quam filiꝰ peccatorū. Quare *ſapientiæ liber*, generationes has duas diſtinguens, de generatione legittima ſic affatur: *O quam pulchra eſt caſta generatio cum claritate! Immortalis eſt enim memoria illius, quoniam apud deum nota eſt & apud homines.* Altera vero

ſin of ſuch fornicators is committed by the mutuall conſent of them both Wherefore it is likened to the firſt ſin, and cleaveth more cruelly to the childe, then the ſin of ſuch as do otherwiſe offend alone: ſo that the Childe ſo begotten deſerveth to be called the childe of ſin, rather then the childe of ſinners, wherefore the Book of Wiſdom making a difference between theſe two generations, of the lawfull generation it ſaith thus: O how fair is a chaſte generation with vertue! The memoriall thereof is immortall: For it is known with GOD and with men. But the other is not known with men,

ſo

so that the children thereof born, are called the children of the people. Of which base generation, the same book thus speaketh: All the children, that are born of wicked parents, are witnesses of wickedness against their parents, when they be asked. For being demaunded of their parentes they open their sin, even as the wicked son of Noe uncovered his fathers pryvities. It is therefore believed touching the blind born, of whom the Pharisees in the ninth Chapter of Saint Johns Gospell said: thou art altogether born in sin: that he was a bastard, who wholly is born of sin: and where it followeth

nōcit nota apud homines, quo filii ex ea nati, filii populi nominātur. De generatione utiq; illa altera, liber ille dicit: *ex iniquis oēs filii qui nascuntur, testes sunt nequitiæ adversus parentes suos in interrogatione sua.* (Sapientię eodē iiii cap.) interrogati etenim de parētib⁹ suis, eorū ipsi revelant peccatū, ut filiꝰ *Noe* nequā revelavit pudēda patris sui. Creditur idcirco cecum illum natum de quo Pharisei, Jo. ix. dixerunt, tu in peccatis natus es totus, fuisse bastardū, qui nascitur totaliter ex peccato, & dum subditur

ditur, & tu doces nos, videtur eos intellexiſſe, baſtardum non ut legittimum, in naturalibus eſſe diſpoſitum ad ſcientiam & doctrinam. Non igitur bene dividit lex illa, q; baſtardos a nativitate, & legittimos, parificat, in hæreditate paterna, cũ eos diſpares judicet eccleſia in hæreditate Dei, ſimiliter & diſtinguat ſacra ſcriptura in forma per notata, dividatq; natura in donis ſuis, ſignans naturales, tãtũ, nçvo quaſi naturali quodam, licet latente, in animis ſuis. Quũ igitur legũ iſtarũ, *Anglicarum*, viz. & *Ci-*

doeſt thou teach us, It ſeemeth that thereby may be underſtanded, that a baſtard hath no like naturall diſpoſition to knowledge and learning, as a lawful child hath. Wherefore, that law maketh no good diviſion, which in the fathers inheritance maketh equall baſtard children and lawfull children, whom the Church in Gods inheritance maketh unequall. Between whom alſo Scripture putteth a difference in form above mentioned: & when nature in her gifts severeth, marking the naturall or baſtard children, as it were, with a certain privy mark in their ſouls. Whether therefore of the two lawes, Engliſh or Civill, do you now imbrace,

moſt

most noble Prince, and judge to have the preheminence in this case.

cilium, in casu hoc, tu *princeps illustrissime*, amplecteris & judicas præferendã

¶ Chap. 41. *The Prince alloweth the Law, which doth not legitimate children born before matrimony.*

Surely, even to that law do I give the preferment, quoth the Prince, which is of more force to abandon sin out of the Realm, & to advance vertue. Those also in the benefit of mans law do I suppose abject & base, whō the Law of God considereth unworthy, and whom the Church in her benefits rejecteth and nature also judgeth more prone unto sin I think you do not judge amiss q̄ the Chancellour. Wherefore I will rehearse yet other cases,

PRinceps, Revera *eam quæ fortius a regno peccatum eliminat, & firmius in eo virtutẽ conservat.* Arbitror etiã illos in legis humanæ beneficiis minorandos, quos lex divina indigniores cõsiderat, & quos postponit ecclesia in beneficiis suis, natura quoq; procliviores judicat ad peccãdũ, Cancellarius. Recte æstimo te sentire, quare & casus alius

me-

memorabor, in quibus diſcrepant hæ leges duæ.

wherein the ſaid Laws diſagree.

Chap. 42. *The third Caſe wherein the Laws aforeſaid diſagree.*

LEges civiles iãciunt, quod *partus ſemper ſequitur ventrẽ*, ut ſi mulier ſervilis conditionis nubat viro conditionis liberæ. Proles eorum ſerv⁹ erit: & è converſo, ſervus maritat⁹ liberæ, nõ niſi liberos gignit. Sed lex Anglæ *nunquã matris, ſed ſemper patris conditionẽ imitari partum judicat.* Ut ex libera, etiam ex nativa, nõ niſi liberũ liber generet, & non niſi ſervum in matrimonio procreare poteſt ſervus.

THe civil Laws decree, that the iſſue ever followeth the womb, that is to ſay, the mother. As for example, if a bond-woman be married to a free man, their iſſue ſhall be bond: And contrariwiſe if a bondman marieth a free womã, he begetteth none but free children. But the Law of England never judgeth that iſſue to follow the mothers condition, but alway the fathers. So that a free man begetteth free children aſwel of a bond woman, as of a free woman, and a bondman in wedlock can beget none other but bond children.

Whe-

whether of these laws is better think you in their sentences? It is a cruel law, which without offence subducth the free mans childe to bondage. And no lesse cruelty is to be thought in the law, which without any desert oppresseth the free womans child with bondage. Yet the Civilians say, that the Civil Laws in these their judgements do excel. For an evill tree, say they, cannot bring forth good fruits, nor a good tree bear evill fruits. And by the consent of all Lawes it is agreed, that every plant yeeldeth to the nature of the ground wherein it is planted, the childe also hath much more certain and sure knowledge of the mother, then of the

Quæ, putas, legum harum melior est in sentētiis suis? crudelis est lex, quę liberi prolē sine culpa subdit servituti. Nec minus crudelis censetur, quæ liberæ sobolē sine merito redigit in servitutem. *Legistæ* vero dicūt, leges civiles pervalere in his judiciis suis. Nā dicūt, quod *nō potest arbor mala fructus bonos facere, Neque arbor bona fructū malos facere.* Ac omnis legis sententia est, qd plātatio quæ libet cedit solo quo inseritur, Certior quoq; multo est partus, quæ cū fuderūt viscera, quā quis cū pater procreavit.

Ad

Ad hæc, *legis Angliæ conſulti* dicunt quod *partus ex legittimo thoro, non certius noſcit matrem quam genitorem ſuũ.* Nam ambæ leges, quæ jam cõtendunt, uniformiter dicunt, quod *ipſe eſt pater, quem nuptiæ demonſtrant.* Nunquid tunc magis eſt conveniẽs, ut filii cõditio ad patris, potius quam ad matris cõditionem referatur, cum de conjugatis dixerat *Adam? erunt ipſi duo in carne una*, qd *dominus* exponens in *Evangelio* ait: *Jam non ſunt duo, ſed una caro*, & cum maſculinum concipiat fœminiſather. Whereunto the Lawyers of England anſwer on this wiſe: That a childe lawfully begotten hath no more certain and ſure knowledg of the mother then of the father. For both theſe laws thus diſagreeing, agree yet in this point, that he is the father, whom wedlock declareth. And is it not then more cõvenient, that the condition of the child ſhould have relation rather to the fathers condition, then to the mothers, Seeing that Adam ſpeaking of married couples, ſaid: They ſhall be two in one fleſh, which our Lord expounding in the Goſpel ſaith; Now are they not two but one fleſh. And forſomuch as the male, as more worthy, containeth the

the female then the whole flesh so united must have relation to the male as to the worthier, wherefore the Lord called Adam and Eve not by the name of Eve, but because they were both one flesh, hee called them both in the name of Adam, the man, as it appeareth in the fift chapter of Genesis. The Civil Laws also hold that women do ever glitter with the shining beams of their husbands. Wherefore in the title beginning with these words; Qui se professione excusant, in the 9 Book L. 1. the text saith thus, we advance women with the honor of their husbands, and with the kinred of their husbands we worship them, in the court

num, ad masculinum quod dignius est, referri debet tota caro sic facta una, Quare *Adam* & *Evam* vocavit dominus, *non Evam*, sed quia caro una ipsi erãt ambos eos vocavit ipse nomine viri, videlicet, *Adam*: ut patet *Genesis* quinto capitulo. Ipsæ quoq; civiles leges dicunt: quod mulieres semper corũscãt, radiis maritorũ suorum. Unde C. *qui professione se excusant*, libro nono, l. fi. text' sic loquitur: *Mulieres honore maritorum erigimus*, & genere nobilitam', & forum ex eo-

rum persona statuimus, & domicilium mutam'. Sin autem *minoris ordinis viri postea sortitæ, priore dignitate privatæ, posteriores mariti conjecuantur conditionem & domicilium.* Et cum nomen patris, & nõ matris, gerat proles omnis, & maxime masculina, Unde tunc provenire poterit, qd filius, ratione matris, amitteret honorem, cõditionemve patris sui mutaret, cujus tamen nomen ipse retinebit præsertim dum honore patris ejusdẽ ac conditione resplendeat mater ejus, & dum viri honor vel conditio

we decree matters to passe in the name of their husbands, & into the house and surname of their husbands do we translate thẽ. But if afterwards a woman marry with a man of baser degree, then loseth she her former dignity, & followeth the condition of her latter husband. And forsomuch as all children, specially male children, bear the fathers name, and not the mothers, wherof then should it come, that the son by reason of the mother should lose the honor, or change the condition of the father whose name nevertheless he shall still keep, specially seeing the mother her selfe receiveth of the same Father, honor, worship & dignity, which honor, worship, dignitie

dignity of the husband can never be desteined or impeached through the fault of the wife. Truly that law may well be deemed cruel, which without any cause, cōmitteth to bōdage the freemās son, & which, disheriting the innocent son of the innocent free father, adjudgeth his land to an unworthy stranger; which also with the base state of bondage in the son defaceth the name of the free father. Cruel also of necessity must that law be counted, which augmenteth thraldome, and diminisheth liberty or freedome. For liberty is the thing that mans nature ever coveteth. For by man and for sin, did bondage first enter. But freedome is graffed in mans

nunquā per uxoris vitium denigratur. Crudelis nēpe censeretur lex, quæ sine causa, filiū liberi servituti committit & terrā, pro qua liber ille innocens à crimine, sudavit innocētis filii sui titulo, non sudanti, tradet extraneo possidendam, ac patris nomen, etiā filii servitutis nota cōmaculat. Crudelis etiā necessario judicabitur lex, quæ servitutem augmentat, & minuit libertatem. Nam *pro ea natura semper implorat humana.* Quia, ab homine, & pro vitio, introducta est servitus. Sed libertas

à Deo hominis est indita naturæ. Quare ipsa ab homine sublata, semper redire gli.icit, ut facit omne, quod libertate naturali privatur. Quo ipse & crudelis, judicād' est, qui libertati non favet. Hæc considerantia *Angliæ jura*, in omni casu libertati dāt favorē. Et licèt *jura illa judicent eum servum, quem servus in conjugio ex libera procreavit*, non per hoc, jura illa rigida, crudeliave sentiri poterunt. Nam mulier, quæ conjugio servo se subjecit facta ei caro una, quo ipsa, ut dicunt leges suprascriptæ,

nature of God. Whereof if men be depriued, he is euer desirous to recouer the same again, like as all other things do, that are spoiled of their naturall liberty. Wherefore wicked and cruel is he to be deemed that fauoreth not libertie. Which things the Lawes of England, duely considering doe in all respects shew fauour to libertie. And though the same laws judge him thrall, whom a bondman in wedlock begetteth of a free woman, yet hereby cannot these Lawes be reputed seuere and cruel. For a woman, which by marriage hath submitted her self to a bondman, is made one flesh with him, wherefore as the foresaid Lawes determine,

the

she followeth the state of his condition, and of her owne free will hath made her selfe a bond woman, not forced thereto by the Lawe, much like to such, as in Kings Courts become bondmen, or sell themselves into bondage without any compulsion at all. And how then can the Lawe determine the childe to be free, whom such a mother hath thus borne: For the husband can never be in so much subiection to his wife, though shee be a right great Ladye. as this woman is subiect to the bondmã, whom she hath made her Lord, insomuch as the Lord saith to all wives: Thou shalt bee under the power of thy

ej' cõsequitur cõditionem, & proprio arbitrio se fecit ancillam, sed potiùs servam nullatenus à lege coacta, qualiter & faciunt, qui se servos reddunt in curiis regum, vel in servitutem se vendunt, nullatenus ad hoc compulsi. Quomodo tunc, liberũ sancire possunt leges filium illum, quẽ mater talis, taliter est enixa? Nunquam enim sic subjecta est vir uxori, *licet maxima Domina ipsa fuerit*, ut subjecta est libera hęc servo, quem ipsa facit dominium ejus, dicente *Domino* uxori omni, *Eris sub*

poteſtate viri, & ipſe dominabitur tibi, Et quid eſt, quod dicunt legiſtæ illi de fructu arboris bonæ vel malæ, nõne conditionis liberę vel ſervilis, eſt uxor omnis, qualis eſt maritus ejus? Et *in cujus ſolo plantavit maritus, dum uxor ejus eſt ſibi caro una? Nonne in proprio*? Quid ſi ſurculum dulcis naturæ inſeverit ipſe ſtipiti arboris acerbæ: Dũmodo arbor illa ejꝰ eſt, *nõne fructꝰ* (licet ex ſtipite redolent) *ſẽper ſint fructus ejus*: Sic ex muliere genita proles, mariti eſt progenies fuerit mater libera vel ancilla. Sanciũt

husband, And he ſhall have dominion over thee; **and what is it that theſe Civilians ſay of the fruit of a good or evill tree, Is not every wife of a free or thrall condition, according to the ſtate of her husband? And** in whoſe ground hath the husband planted, while his wife is one fleſh with him? Not in his own? **And what then if he have graffed a ſlip of a ſweet nature in a ſtock of a ſoure tree: So that the tree be his own,** ſhall not the fruits, **though they ever ſavor of the ſtock,** be his own fruits? **So the childe which the wife beareth is the husbands ſeed, whether the wife be free or thrall.** Notwithſtanding the Laws of Eng-

land

land decree, that if a bondwoman, without the consent of her lord, be married to a freeman, though they cannot be divorced, cause the Gospel saith, whom God hath conjoyned let no man separate: yet shall her lord recover against the same freeman all the dammages, that he hath sustained by reason of the loss of his vassal or bondwomã. This now, as I suppose, is the sum and form of the law of England in the case now declared. What therefore is your opinion most excellent Prince, in the same case? And whether of these two lawes do you esteem to be of more worthines and excellency?

tamẽ leges Angliæ, qd *dominus nativæ, à libero in matrimoniũ sumptæ ipso inconsulto*, cum eã repudiare nequeat, dicẽte Evangelio: *quos Deus conjunxit, homo non separet*: recuperabit versus liberum illum, omne damnũ, qd ipse sustinuit ratione deperditi servitii, & amissæ ancillæ. Hæc jã ut æstimo, est sũma & formalegis Angliæ, in casu jã enarrato. Quid igitur jã tibi videtur, *Princeps*, in casu isto? & quæ legũ perdictarũ præstantior aut eligibilior à te judicatur?

¶ Chap. 43. *The Prince approveth the Law, wherby the issue followeth not the wombe.*

PRinceps, Anglorum legẽ in hoc caſu Romanorũ legi prẽſtare dubitare nos ratio nõ permittit. Et optatior mihi ſemper eſt lex, quæ favorem potius quã rigorẽ, partib' adminiſtrat. Eccleſio nãq; illi' juris regulã, quæ ſic dicit: *odia perſtringi, & favores convenit ampliari.* Cancellarius, Et bene quidem. Aliũ adhuc caſum tibi referam, princeps, in quo concertant leges iſtę, & nõ multum poſtea, tũc deſiſtã, ne oneroſũ tibi ſit, tãtis ſolicitari ſciſmatib', etiã ne in faſtidiũ tibi veniat deſceptatio mea

REaſon ſuffereth us not to doubt (quod the Prince) but that in this caſe the law of England ſurmounteth the Roman Law. And that Law is to me more alowable, which unto children ſheweth favour, rather then rigour. For I remember a rule of the Law, that ſaith: It is behoveable that cruell hate be repreſſed, and favour advanced. And good reaſon (quod the Chancellour) Yet will I expreſſe unt you another caſe, wherein theſe Laws are repugnant, And ſhortly after I will make an end, leaſt it be tedious to you, to be troubled with ſo many diſagreeings, and leaſt you happen to be wearied with

with my over long talk./diutius protelata.

¶ Chap. 44. *The fourth case, wherein the said Laws vary.*

The Civil laws commit the tuition of Orphans to the next of their bloud, whether the kinred grow on the fathers side, or on the mother side, that is to say, to every man according to the degree and order, wherein his turn is next to succeed the pupill in his inheritãce. And the reason of this law is for that no man will behave himself more tenderly or more favourably in the carefull education of the Infant, then he that is next of his bloud.

Leges civiles *impuberum tutelas, proximis de eorum sanguine, committunt,* agnati fuerint seu cognati, unicuique videlicet secundum gradum & ordinem, quo in hæreditate pupilli succeſſurus est. Et ratio legis hujus est, quia nullus, tenerius favorabiliusve infantem alere satagetquam proximus de sanguine ejus.

Ta-

Tamen longe aliter *de impuberum cuſtodia* ſtatuunt leges Angliæ. Nam ibidem, *ſi hæreditas, quæ tenetur in Socagio, deſcendat impuberi ab aliquo agnatorum ſuorum, non erit impubes ille, ſub cuſtodia alicujus agnatorum ejus, Sed per ipſos cognatos, videlicet, conſanguineos ex parte matris ipſe regetur.* Et ſi ex parte cognatorum hæreditas ſibi deſcenderit, pupillus ille cum hæreditate ſua, per proximum agnatum, & non cognatum, ejus cuſtodietur, Quouſq; ipſe fuerit adultus. Nam leges illæ

Nevertheleſs the Laws of England touching the cuſtody of Orphans, do determine much otherwiſe. For there, if an inheritance, being holden in Socage deſcend to an Orphan, from any of the kindred of his Fathers ſide, the ſame Orphan ſhall not be under keeping of any of that kindred, but he ſhall be governed by his coſins or kinſfolk of his mothers ſide. And if the inheritance come to him from any kinſman of his mothers ſide, then the pupill with his inheritance ſhall be in the cuſtody, till he come to lawfull age of him that is next of his kin of his fathers ſide, and not of any kinſman of the mothers ſide. For our laws

ſay,

say, that to commit the tuition of an infant to him, that shall next succeed him, is like as if one should betake a lamb unto a Wolfe to be devoured. But if the inheritance be not holden in socage, but by Knights service, then by the Laws of the same land, the child with his inheritance shall be in the keeping of none of his kindred of either side, but in the custody of the Lord of the fee, untill he come to the age of one and twenty years. And think you, that any man can or will better instruct and train up the childe in feates of Armes, which by reason of his tenure, he is bound to yield to the Lord of his fee,

dicunt quod *committere tutelam infantis illi qui est ei proxime successurus, est quasi agnum committere lupo ad devorandum.* Sed si hæreditas illa, non in socagio, sed teneatur per *servitium militare*, tũc per leges terræ illi, Infans ipse & hæreditas ejus non per agnatos neq; cognatos, sed *per dominum fœdi illius custodientur, quousque ipse fuerit ætatis viginti & unius annorũ.* Quis, putas instrũctẽ talẽ, in *actibus bellicis*, quos facere, ratione tenuræ tuę ipse astringitur domino fœdi suo, melius instruere poterit, aut velit,

quam

quam dominus *ille*, cui ab eo ſervitium tale debetur? & qui majoris potentiæ & honoris eſtimatur, quã ſunt alii amici propinqui tetentis ſui? Ipſe namq; ut ſibi ab eodem tenente melius ſerviatur, diligentẽ curã adhibebit, & melius in his eum erudire expertus eſſe cenſetur, quam reliqui amici juvenis rudes forſan & armorum inexperti, maxime ſi non magnum fuerit patrimonium ejus. Et qd utilius eſt infanti, qui vitam & omnia ſua periculis bellicis exponet in ſervicio domini ſui ratione tenuræ ſuæ,

then the Lord himſelf, to whom ſuch ſervice is by him due? Which is alſo to be judged of more power and honour, then the friends and kinſfolk of his tenaunt. For he, to the intent he may in time to come be the better ſerved of his tenant, will uſe the more diligence towards him, And it is to be preſumed, that he is more expert and ſkilfull to trade him in theſe things, then his other friends, rude peradventure & unpractiſed in martiall feats, ſpecially if his patrimony be but ſmall. And what can be more profitable for the childe, which by reaſon of his tenure, ſhall in ſervice of his Lord, endanger his life

and

and all that he hath, in the acts of Chivalry, then in his nonage, to be brought up in the discipline and practice of the same, seeing that in his ripe age he shall not be able to avoide the adventure thereof: And to say the truth, it shall be no small commodity for the Realm, that the inhabiters of the same be well expert in the knowledge of Arms. For, as saith the Philosopher, every man doth the things boldly, wherein he assureth himself to be skilfull. And do you not then, most noble Prince, allow this Law, and commend it above the other now described?

quam in militia actubusque bellicis imbui, dum minor est cum actus hujusmodi ipse in ætate matura declinare non poterit? Et revera, non minime erit regno accommodum, ut incolæ ejus in armis sint experti. Nam, ut dicit Philosophus, *audacter quilibet facit, quod se scire ipse non diffidit.* Nunquid tunc legem hanc, tu approbas, *fili Regis*, & collaudas super Legem alteram jam descriptam?

Here

¶ Chap. 45. *Here, the Prince commendeth the education of Noble mens children being Orphans.*

P*Rinceps*, Immo, Cancellarie, legem hanc, pluſquã alteram, ego laudo. Nam, in ejus parte prima quam tu notaſti, caute magis, quam civilis, ipſa providet ſecuritati pupilli. Sed tamé in ejus parte ſecunda, multa magis ego delector, nam ab ea eſt, qd in Anglia, nobilium progenies de facili degenerari nõ poteſt, ſed *probitate* potius, *ſtrenuitate*, & *morum honeſtate*, anteceſſores ſuos ipſa tranſcendet, dum in altiori,

YEs good Chancellor, quoth the Prince, this Laſt I do allow much more then the other. For in the firſt part of it, which you noted, it provideth much more warily for the ſecurity and ſafegard of the pupill, then the Civill law doth. Howbeit in the ſecond part of the ſame, I do take more delight. For thereof it cometh to paſs, that in England Noble mens children cannot eaſily degenerate, but rather paſs and ſurmount their anceſtors in vertue, in courage, and in honeſt conditions, forſomuch as they are brought up and inſtructed in an higher and

and an honorable Court, then in the houses of their Parents, though their Parents were peradventure brought up in the like places: For their Parents house was never yet like the Lords house, whom as well the Parents, as also the Children served. The Princes also of the Realm, being ruled by this Law, and likewise other Lords, holding their Land immediatly of the King, cannot lightly fall to wantonnesse and unseemlinesse, seeing that in their childhood while they bee Orphanes, they are brought up in the Kings house, wherefore I must needs highly praise and commend the riches

nobiliorique curia, quam in domo parentum, illa sit imbuta licet in domo consimili forsã parentes ejus educati erant: Quia consimilis adhuc non erat, domus parentum illorũ, domui Dominorum, quibus, ipsi parentes, & ipsi infantes, serviũt. Principes quoque regni sub hac lege regulati, similiter & domini alii à rege immediate tenentes, non possunt de levi in lasciviam ruditatemve labi, cum in pueritia, dum Orphani fuerint ipsi, in domo regia nutriũtur. Quare non infime

domus

domus regiæ opulentiam magnitudinemq; collaudo, dū in ea gimnaſium ſupremū, ſit nobilitatis regni ſcola quoq; ſirenuitatis, probitatis, & morum quib' regnū honoratur, & floret ac cōtra irruentes ſecuratur, etiam formido, ipſa erit, inimicis & amicis regni. Hoc revera bonum accidiſſe non potuiſſet regno illi, ſi nobilium filii, orphani & pupilli, per paupereſ amicos parentum ſuorum nutrirentur. Nec regni bono officere poteſt, licet burgenſium filii & aliorū libere tenentium, & high poꝛte of the Kings Court, in that it is the chiefeſt ſchool within the Realme, foꝛ the Nobility of the Land. It is alſo the Schoolhouſe of manhood, of vertue, and of good manners, whereby the Realme is honoured and flouriſheth, & is preſerved againſt invaſions: ſo that it is dꝛeaded both of friends and foes, and to be plaine, this great commoditie could not have happened to the Realme, if Noble mens childꝛen, being Dꝛphans and pupills, had beene nouriſhed and bꝛought up by the poore fꝛiends of their parents. Neither can this bee pꝛejudiciall oꝛ hurtfull to the wealth of the Realme, that the Childꝛen of Burgeſſes,

and

and of other freeholders, which hold their tenements in socage, & are not thereby bound to warfare, are brought up in the houses of their like friends, as to him, that shall thoroughly weigh the matter, it may evidently appear.

qui in soacgio tenēt tenementa sua, quo ipsi ad militiam non astringuntur, in domo consimilium amicorū suorū educātur, ut perspicue consideranti, lucide apparere potest.

¶ Chap. 46. *Yet he rehearsed other cases, wherein the foresaid Laws differ.*

There be yet divers other cases, quod the Chancellour, wherein, the Laws aforesaid do vary. As in that the Civill Laws do judge, open Theft to be satisfied by the recompence of fourfold, and privy Theft, by the recompence of double. But the Laws of England suffer neither of

Tunc Cancellari⁹. Sunt & alii casus nonnulli, in quib⁹ differūt leges antedictæ. Ut quia leges civiles judicāt *furtum manifestum*, per redditionę quadrupli: & *furtum non manifestum*, per dupli recōpensationē, expiari. Sed leges Anglię, *nentrum*

facinorum illorum, mitius quam commiſſi tentis morte puniri permittunt, dummodo ablati valor, *duodecim denariorum valorem excedat*. Item *libertinum*, ingratum, leges civiles in priſtinã redigunt ſervitutẽ: ſed leges Angliæ *ſemel manumiſſum, ſemper liberum judicant*, gratum & ingratum. Alii quoque ſunt caſus hujuſcemodi non pauci, quos jam, ſtudio brevitatis, prætereo. Et neque in hiis duobus caſibus, prædictarum legum prærãtias, ego jam deſcribo, cum non magnę ſint indagi-

thoſe offences to be more favourably puniſhed then with the offendours death, ſo that the value of the thing ſtollen, be above the value of twelve pence. Alſo a libertine, that is to ſay, a freeman, that ſometime was bond, if he become unkind or churliſh, the Civill Laws reduce him into his former ſtate of ſervitude again: But by the Laws of England he that is once made free, be he grate or ingrate, is adjudged to enjoy his Freedom ſtill. There be other like caſes alſo not a few, which at this time for brevities ſake I overpaſs. Neither in theſe two caſes, do I diſpute the excellencie of the foreſaid Lawes, ſeeing

seeing the qualities of thē require no great search. And I doubt not, but the quickness of your wit is such, that it can sufficiently discusse the same.

nis, eorum qualitates, nec diffido, ingenii tui solertiam eas sufficienter posse rimari.

¶ Chap. 47. *The Prince regardeth not the cases now rehearsed.*

NOnor it booteth not, good Chancellour, herein much to tarry, ꝙ the Prince, For though in England, aswell open, as privy theeves, are commonly put to death, yet cease they not there from stealing, as though they had no fear of so great a punishment. How much lesse then would they withhold their hands from theft,

PRinceps. Nec expedit Cancellarie, in hiis multū sudare: quia, licet in Anglia fures clādestini & manifesti passim morte plectantur, nō cessāt ipsi ibidē omnino prædari, ac si pænā tantam illi minime formidarent. Quanto tunc minus, *se abstinerent a crimine*

ſi pœnam prævidérent mitiorem? Et abſit, a ſervitute ſemel evaſum, ſemper deinde ſub minis tremere ſervitutis, maxime ingratitudinis colore, cum ingratitudinum ſpecies, vix poterint, præ multitudine, numerari, & *humana natura, in libertatis cauſa favorem ſemper, magis, quam in cauſis aliis, deprecetur.*

Sed jam, Cancellorie, obnixe te imploro, ut amodo amiſſa plurium caſuũ hujuſmodi examinatione, mihi edicas, quare leges Angliæ, tam bonæ, frugi, & optabiles, *in*

if they foreſaw one that the puniſhment were mitigated? And God forbid, that he which once hath eſcaped miſerable ſervitude, ſhould ever after tremble and quake at the threatnings of bondage, ſpecially under the colour of ingratitude or unkindneſſe, ſeeing the kinds of gratitude are ſo many, that they can ſkant well be numbred: and mans nature in the cauſe of liberty of Freedom, more then in other cauſes, requireth favour.

Wherefore at this time, good Chauncellour, I beſeech you hartily meddle no more with the examination of any ſuch caſes. But now explane & open unto me why the laws of England, being ſo good,

ſo

so fruitfull, and so commodious, are not taught in the Universities, as the Civill and Canon laws are: and why in the same, none are commenced Bachelers and Doctors, as in other faculties and sciences it is accustomed.

universitatibus non docentur, ut Civiles similiter & Canonũ leges: & quare in eisdem, non datur *Baccalariat⁹ & Doctoratus* gradus, ut in aliis facultatibus & scientiis est dari consuetum.

¶ Chap. 48. *Here the Chancellour sheweth, why, the Laws of England are not taught in Universities.*

IN the Universities of England, quod the Chancellour, sciences are not taught but in the Latine tongue: And the laws of that lãd are to be learned in iii. severall tongues: to wit, in the English tongue, the Frẽch tongue, and the Latine tongue.

CAncellarius, in Universitatib⁹ Angliæ, non docentur scientiæ nisi in *Latina* lingua: Et leges terræ illius in triplici lingua addiscuntur: videlicet, *Anglica, Gallica, & Latina.*

Anglica, quia inter Anglos lex illa maximè inolevit. *Gallica*, quia postq. galli, *Duce Wilhelmo Angliæ cõquestore* terrã illã obtinuerunt, nõ permiserũt ipsi eorũ advocatos placitare causas suas, nisi in lingua, quã ipsi noverunt, qualiter & faciũt omnes advocati in Francia, etiã in curia parliamẽti ibidẽ. Consimiliter gallici post eorũ advẽtum in Angliam, ratiocinia de eorum provẽtibus non receperunt, nisi in proprio idiomate, *ne ipsi inde decipientur. Venari* etiam, & jocos alios exercere, ut *talorũ & pi-*

In the English tõgue, because the law is most used, & longest cõtinued amõgst the Englishmen. In the Frẽch tongue, because that after the Frenchmen under Willã the Cõqueror of England had obtained the land, they suffered not their men of law to plead their causes, but in the tõgue wch they knew, and so do all the men of law in France, yea in the court of Parliamẽt there. Likewise the Frenchmen, after their coming into England, receive not the accompts of their revenues but in their own language, least they should be deceived therein. Neither had they delight to hunt, and to exercise other spoyts and pastimes, as dice play, and the hand ball,

ball, but in their own proper tongue. Wherefore the Englishmen by much using of their company, grew in such a perfectnes of the same language, that at this day in such playes and accompts they use the French tongue. And they were wont to pleade in French till by force of a certain Statute, that manner was much restrained, But it could never hitherto, bee wholly abolished, aswel by reason of certain Terms, which pleaders do more properly expres in French, then in English, as also for that declarations upon originall writs cannot be pronounced so agreeably to the nature

larũ ludos, nõ nisi in propria lingua delectabũtur. Quo,& Anglici ex frequẽti eorũ in talib⁹ cõitiva, habitũ talẽ ẽctrãxerũt. qd *huc usque ipsi in ludis hujusmodi, & cõpotis, linguã loquũtur gallicanam* & placitare in eadem lingua soliti fuerũt quousq; mos ille, vigore cujusdã statuti quã plurimũ restrict⁹ est tamẽ in toto hucusq; aboleri nõ potuit, tũ propter *terminos* quosdã, quos pl⁹ propriẽ placitantes in gallico, quã in Anglico, exprimũt, tũ quia *declarationes super brevia originalia*, tã cõveniẽter ad naturã

breviũ illorum pronuntiari neqũt, ut in Gallica, ſub quali ſermone *declarationis hujuſmodi formulæ addiſcũtur*. Reportãtur etiã *ea, quæ* in curiis regiis *Placitãtur, diſputãtur, & judicantur* ac in libros ad futurorũ eruditionẽ redigũtur in ſermone ſẽper gallico. Quã pluri ma etiã *ſtatuta* regni illi' in gallico cõſcribũtur. Unde accidit qd lingua jã in Francia vulgaris, non concordat aut conſimilis eſt gallico inter ligiſperitos Angliæ uſitato, ſed vulgariter quadam ruditate corrupta. Qd fieri nõ accidit in ſermone gallico

of thoſe writs, as in French. And under the ſame ſpeech the forms of ſuch declarations are learned. Moreover, all pleadings, arguings, and judgements paſſed in the kings court, and entered into books, for the inſtruction of them that ſhal come after, are ever more reported in the French tongue. Many Statutes alſo of that realm are written in French. Whereof it happeth that the common ſpeech, now uſed in France, agreeth not, nor is not like the French uſed among the Lawyers of England, but it is by a certain rudeneſs of the common people corrupt. Which corruption of ſpeech chanceth not in the French

that

that is used in England, forsomuch as the speech is there oftner written then spoken. Now in the third of the said three tongues, which is the Latine tongue, are written all Writs original and judicial: and likewise all the Records of pleas in the Kings Courts, with certain Statutes also. Wherefore, while the Laws of England are learned in these three tongues, they cannot conveniently be taught or studied in the universities, where onely the Latine tongue is exercised. Notwithstanding the same Lawes are taught and learned, in a certain place of publique or common study, more convenient and apt for attaining to the

intra Angliã usitato, cũ sit sermo ille ibidẽ sæpiꝰ scriptus quã locutꝰ. Sub tertia vero linguarum prædictarũ vz. sub *latina*, omnia *brevia originalia & judicialia*, similiter & omnia *recordo placitorũ* in curiis regũ, etiam & quædam *Statuta* scribuntur. Quare, dum leges Angliæ in his tribꝰ addiscũtur linguis, ipsæ in universitatibꝰ ubi solũ exercetur lingua latina convenienter eruditi non poterũt aut studeri. Leges tamen illæ in quodam studio publico per illarũ apprehẽsione (omni universitate convenientiore &

pro-

proniore docẽtur & addiſcũtur, *Studium* nãq; *iſtud ſitũ eſt prope curiã regis*, ubi leges illæ placitantur, diſputantur & judicia per eaſdẽ redd̃tur per judices viros graves ſenes, in legib⁹ illis peritos & graduatos quo in curiis illis ad quas omni die placitabili cõfluũt ſtudẽtes in legib⁹ illis, quaſi in ſcolis publicis, leges ille legũtur & docẽtur. Situatur etiã ſtudiũ illud, *inter locũ curiarũ illarũ &* Civitatẽ *Lõdon* quæ de omnibus neceſſariis opulẽtiſſima eſt omniũ civitatũ & oppidorũ regni illius, Nec in civitate illa, knowledg of them thẽ any other univerſity. For this plac of ſtudy is ſituate nie to the Kings court, where the ſame laws are pleaded & argued, & judgements by the ſame given by Judges, men of gravity, ancient in years, perfect and graduate in the ſame laws. Wherefore, every day in court, the ſtudents in thoſe Lawes reſort by great numbers into thoſe courts wherein the ſame Lawes are read and taught as it were in common ſchools. This place of ſtudy is ſet between the place of the ſaid Courts, and the City of London, which of all things neceſſary is the plentifulleſt of all the Cities and Towns of the Realm. So that the ſaid place of ſtudy is not ſituate

ſituate within the City, where the confluence of people might diſturb the quietneſs of the ſtudents, but ſomewhat ſeverall in the ſuburbs of the ſame City, and nigher to the ſaid Courts, that the ſtudents may dayly at their pleaſure have acceſs and recourſe thither without wearineſs.

ubi cõfluẽtium turba, ſtudentiũ quietẽ perturbare poſſit, ſitum eſt ſtudiũ iſtud ſed ſeorſum parum per, in civitatis illi⁹ ſuburbio, & propi⁹ Curiis prædictis, ut adeas ſine fatigationis incõmodo, ſtudẽtes, indies ad libitũ, accedere valeant.

¶ Chap. 49. *Here he declareth the diſpoſition of the general ſtudy of the Laws of England, and that the ſame in number of ſtudents paſſeth certain univerſities.*

BUt to the intent, moſt excellent Prince, ye may conceive a forme and an image of this ſtudy, as I am able, I will deſcribe it unto you. For there be in it ten leſſer houſes or Innes, & ſometimes moe,

SEd, ut tibi conſtet *princeps* huj⁹ ſtudii forma & imago, illam, ut valeo, jam deſcribã. Sunt namq; in eo, *decem hoſpitia minora*, & quãdoq; vero plura quæ

quæ nominãtur *hoſpitia Cancellariæ* ad quorũ q̃libet pertinẽt cẽtũ ſtudẽtes ad minus, & ad aliqua eorũ major in multo numer⁹, licet non oẽs ſẽper in eis ſimul cõveniant. Studẽtes etenim iſti, pro eorũ partũ majori, juvenes ſũt, *originalia*, & quaſi legis elementa addiſcẽtes, qui in illis proficiẽtes, ut ipſi maturaſcunt, ad *majora hoſpitia* ſtudii illius, quæ *hoſpitia curiæ* appellantur, aſſumũtur. Quorum majorum, *quatuor* ſunt in numero, & ad minimum eorum pertinent in forma prænotata, ducenti ſtudẽtes aut prope.

which are called Innes of the Chancery. And to every one of them, belongeth an hundred ſtudents at the leaſt, and to ſome of them a much greater number, though they be not ever all together in the ſame. Thoſe ſtudents for the moſt part of them, are young men, learning or ſtudying the originals, as it were the elements of the Law, who profiting therein, as they grow to ripeneſſe, ſo are they admitted into the greater Innes of the ſame ſtudy, called the Innes of Court, Of the which greater Inns there are four in number. And to the leaſt of them belongeth, in form above mentioned, two hundreth Students or there abouts.

For

For in these greater Innes, there can no Student be maintained for lesse expenses by the year, then twenty Markes, And if hee have a servant to waite upon him, as most of them have, then so much the greater will his charges be. Now, by reason of this charges, the children onely of Noble men do study the Lawes in those Innes. For the poor and common sort of the people, are not able to bear so great charges for the exhibition of their Children. And marchaunt men can seldom find in their hearts to hinder their marchandise with so great yearly expenses.

In hiis enim majoribus hospitiis, nequa quã poteſt ſtudens aliquis ſuſtẽtari minoribus expenſis in anno, quam octoginta ſcutorum, & ſi ſervientem ſibi ipſe ibidem habuerit, ut eorum habet plura-litas, tãto tunc majares ipſe ſuſtinebit expenſas. Occaſione vero ſũptuũ hujuſmodi, ipſi nobiliũ filii tãtũ in hoſpitiis illis leges addiſcũt. Cũ pauperes & vulgares, pro filiorũ ſuorum exhibitione, tantos ſumptus nequeant ſufferre. Et mercatores raro cupiant tantis oneribus annis attenuare mercandiſas ſuas.

Quo fit ut vix doctis in legibus illis reperiatur in regno qui non ſit nobilis, & de nobilium genere egreſſi. Unde magis aliis cõimilis ſtatus hominib', ipſi nobilitatem curant & conſervationẽ honoris & famæ ſuæ. In his revera *hoſpiciis majoribus*, etiam & *minoribus*, ultra ſtudium legũ eſt quaſi gimnaſiũ omnium morũ, qui nobiles decent. Ibi *cantare* ipſi addiſcunt ſimiliter & ſe exercent in omni genere harmoniæ. Ibi etiam *tripudia*, ac *jocos ſingulos nobilibus convenientes* qualiter in do-

And thus it falleth out that there is ſcant any man founde within the Realme skilfull & cunning in the laws except he be a Gentleman born, & come of a Noble ſtock. Wherfore they more then any other kind of men have a ſpeciall regard to their Nobilitie, and to the preſervation of their honor & fame. And to ſpeake uprightly, there is in theſe greater Innes, yea, & in the leſſer too, beſide the ſtudy of the laws, as it were an univerſitty or ſchoole of all comendable qualities requiſite for Noblemen. There they learn to ſing, & to exerciſe themſelves in all kinde of harmony. There alſo they practiſe dauncing, & other Noble mens paſtimes, as they uſe to

to do, which are brought up in the Kings house: On the working dayes, most of them apply themselves to the study of the Law. And on the holy dayes to the study of holy Scripture: and out of the time of Divine service, to the reading of Cronicles. For there indeed are vertues studied and vices exiled. So that, for the endowment of vertue, and abandoning of vice, Knights and Barons, with other States and Noblemen of the Realm, place their Children in those Innes, though they desire not to have them learned in the Lawes, nor to live by the practise thereof, but only upon their fathers allowance

mo regis exercere solet, enutriti: inferialibus diebꝰ, eorũ pars major, *legalis disciplinæ* studio, & in festivalibus *sacræ scripturæ*,& *Cronicorũ* lectioni, post divina obsequia, se conferc. Ibi quippe disciplina virtutum est & vitiorum omnium exiliũ. Ita ut propter virtutis acquisitionem,vitii etiam fugã, milites, barones alii quoq; magnates & nobiles Regni,in hospitiis illis ponunt filios suos quamvis non gliscant eos legũ imbui disciplina nec ejus exercitio vivere sed solũ ex patrociniis suis

Ibi

ibi vix unquam ſeditio, jurgium, aut murmur reſonat, & tamen delinquentes nõ alia pœna quam ſolum acommunione ſocietatis ſuæ amotione plectũtur, quia pœnam hanc, ipſi plus formidant, quam criminoſi alibi carcerem timent, aut vincula, nam ſemel ab una ſocietatum illarum expulſus, nunquã ab aliqua cæterarum ſocietatum earundẽ, recipitur in ſocium, quo ibi pax eſt cõtinua, & quaſi amicitia conjũctorum, eſt eorum, omnium converſatio. Formã vero, qua leges illæ in his diſcũtur

Scant at any time is there heard amongſt them any ſedition, chiding or grudging, And yet the offendours are puniſhed with none other pain, but onely to be amoved from the company of their fellowſhip. Which puniſhment they do more fear, then other criminall offendors do fear impriſonment and irons: For he that is once expelled from any of thoſe fellowſhips is never received to be a fellow in any of the other fellowſhips, And ſo by this means there is continuall peace: and their demeanour is like the behaviour of ſuch as are coupled together in perfect amity. But after what manner and ſort the laws

laws are learned in those Innes, thereof here to make rehearsall, it is not needfull, forsomuch as it is not for your estate most noble Prince, to put the same in ure yet know ye this, that it is pleasant and delectable, and in any wise expedient, for the learning of the Law, and worthy with all affection to be embraced. But one thing there is, that I would have you to know, that neither at Orleance, where aswell the Canon as the Civill laws, are taught, and whether, out of many countries, scholars do repair, nor at Angeo, or at Cane, or any university of Frãce (Paris onely excepted) are found so many students past childehood, as in this place of studie,

hospitiis, hic exprimere non expedit, cum tibi, *princeps*, eã experiri nõ liceat. Scito tamen, qd delectabilis ipsa est & omni modo expediẽs legis illi⁹ disciplinæ *omni quoque affectione* digna. Unum tamen te scire desidero, qd neque *Aurelianis* ubi tam Canones addiscuntur, quam civiles leges, & quò, a quam pluribus regionib⁹ confluunt scolares, neq; *Andaginis*, aut in Cadomo, aliave universitate Franciæ præterquam solum *Paris iis*, reperiuntur tot studentes infantiam evasi, sicut in hoc studio,

licet ibi addiſcẽtes omnes, ſolũ ab Anglia ſint oriundi.

notwithſtanding that all the ſtudents there are Engliſh borne.

¶ Chap. 50. *Of the eſtate and degree of a Serjeant at Law, and how he is created.*

SEd cum tu, *princeps*, ſcire deſideres, cur in legib⁹ Angliæ nõ dãtur *Baccalariat⁹ & Doctoratus grad⁹*, ſicut in utroq; jure in univerſitatib⁹ eſt darę cõſuetum: Scire te volo, qd licet gradus hujuſmodi, in legibus Angliæ, minime cõferãtur: datur tamen in illis, *nedũ gradus, ſed &* ſtatus quidam, *gradu doctoratus non minus celebris aut ſolemnis*, qui *gradus ſervientis ad legẽ* appellatur. Et cõfertur ſub hac, quæ ſubſe-

BUt forſomuch as you deſire to know, moſt gracious Prince, for what cauſe the degrees of Bachelors and Doctors are not given in the Lawes of England as they are accuſtomably given in both Laws within univerſities, your Majeſty ſhall underſtand, that, though their degrees are not given in the Lawes of England, yet there is given in them not a degree onely, but alſo a ſtate no leſſe worſhipfull and ſolemn, then the degree of doctors: which is called the degree of a Serjeant at Law. And it is

given

given under the manner and forꝫm following. The Lord chief Justice of the Common Bench, by the counsell & assent of all the Justices, useth, as oft as he thinketh good, to chuse seven or eight of the discreetest persons, that in the foresaid generall study have most profited in the Laws, and which to the same Justices are thought to be of best disposition, and their names he presenteth to the Lord Chauncellour of England in writing, who incontinent, by virtue of the Kings Writ, shall charge every of the persons elect to be before the king at a day by him assigned, to take upon him the state & degree of a ser-

quitur, forma. Capital' *Justicarius* de *communi banco*, de cõsilio & assẽsu õnium Justiciariorum, eligere solet, quoties sibi videtur oportunum, 7 vel 8 de maturioribus personis, qui in prædict' generali studio majus in legibus profecerũ, & qui eisdẽ justiciariis optimę dispositionis esse videtur & nomina eorũ ille deliberatur solet *Cancellar' Angliæ* in scriptis, qui illico mãdabit per brevia regis, cuilibet electorum illorum, quod sit corã rege, ad diẽ per ipsum assignatũ, ad suscipiendum *statum* & *gradum ser-*

rientis ad legem, ſub ingẽti pœna, in quos libet breviũ prædictorum, limitata: ad quem diem quilibet eorũ cõparẽs, jurabitur (*ſuper ſancta Dei evangelia*) fore paratũ, ad diẽ & locum tunc ſibi ſtatuendos, ad recipiẽdũ *ſtatũ* & *gradũ* prædictum, & qd ipſe in die illo dabit *aurum* ſecundũ cõſuetudinẽ regni in hoc caſu uſitatã. Tamen, qualiter ad diem illum, quilibet electorum prædictorũ ſe hababit, necnon formam & modum, qualiter *ſtatus* & *gradus* hujuſmodi conferentur & recipientur, hic inſerere omitto:

jeant at Law, under a great penalty in every of the ſaid Writs limited: on the which day, every one of them appearing, ſhall bee ſworn upon the holy Goſpell of GOD, to be ready, at the day and place then to be appointed to receive the ſtate and degree aforeſaid, and that he the ſame day ſhall give Gold according to the cuſtom in that behalf uſed. How be it, how and after what ſort, every of the ſaid perſons ſhall that day demean himſelf and alſo the form and manner, how, that ſtate and degree ſhall be given and received, forſomuch as the ſame can not

ſo

so briefly be written, as to the shortnesse of this work is requisite therefore at this time, I will leave these points untouched. And yet I have declared the same to you ere now by way of talk. But this you must understand, that when the day appointed is come, those elect persons among other solemnities, must keep a great dinner like to the feast of a Kings Coronation, which shall continue and last by the space of seaven dayes, And none of those elect persons shall defray the charges growing to him about the coasts of this solemnity, with lesse expences, then the summe of four hundred marks, so that the expences, which

cum scripturâ majorem illa exigant, quam cõgruit operi tam succincto. Tibi tamen, ore tenus, ea aliàs explicavi. Scire tamen te cupio, quod adveniẽte die sic statuto, electi illi, inter alias solemnitates *festum* celebrant & *convivio* ad instar *coronationis Regis* quod & continuabitur per *dies septem*, nec quisquam electorum illorum, sumptus sibi contingentes circa solemnitatem creationis suæ, minoribus expensis perficiet, quam mille & lex centorum scutorum, quos expensæ, quas

octo, sic electi, tunc refundent, excedunt summã 3200 *marcarũ* expensarũ: pars quædã inter cætera, hæc erit. Quilibet eorum dabit *annulos de auro*, ad valẽciam in toto, 40. librarũ (ad minus) monetæ Anglicane: Et bene recolit Cãcell' ipse, quod dũ ille statũ & grad. hujusmodi receperat, ipse soluit pro anulis, quos tũc distribuit, 50. libras, quę sunt 300. scuta. Solet nãque unusquisq; *Serviẽtiũ* hujusmodi, tẽporũ creation' suę dare cuilibet *Principi Duci*, & *Archiep'o*, *in solennitat' illa præsenti*, ac *Cãcellario*, & *Thesau-*

eight men, so elect, shall then bestow, will surmount to the sum of three thousand and two hundred Markes: Of the which expences, one parcell shall bee this. Every of them shall give ringes of gold, to the value of forty pounds sterling at the least: And your Chauncellour well remembreth, that at what time hee received this state and degree, the rings which he then gave, stood him in fifty pounds. For, every such Serjeant, at the day of his creation, useth to give unto every Prince, Duke, and Archbishop, being present at that solemnity, and to the Lord Chauncellour, and Lord Treasurer

surer of England, a ring of the value of xxvi. shillings viii. pence. And to every Earl and Bishop being likewise present, and also to the Lord Privy seal, to both the Lords chief Justices, and to the Lord chief Baron of the Kings Exchequer a ring of the value of xx. shillings. And to every Lord Baron of the Parliament, and to every Abot & notable Prelate, & worshipful Knight, being then present, & also to the Master of the Rolls, and to every Justice, a ring of the value of a Mark, And likewise to every Baron of the Exchequer, to the Chamberlains, and to all the officers and notable men serving in the Kings courts, rings of a smal-

rario Anglię anulū ad valorē 26. s. 8 d', & cuilibet *Comiti* & *Episcopo* cōsimiliter prælētib', necnō *Custodi privat' sigilli* utriq; *capitali Justic'* & *capitali Baroni* de *scaccario* regis anulū ad valorē 20. s. & cōni domino *bar. perliamēti* & cōni *Abbati* & notabili *Prælato*, ac magno *Militi*, *tunc* presenti, *custodi* etiā *Rotulorū cancellarie* regis, & cuilibet *Justic'* anulū ad valētiā 1. marcę, Similiter & omni *Baroni* de *scacc'* regis, *camerariis*, etiā omnibus *officiariis* & notabilibus viris in *curiis* regis ministrātibus, anulos minoris prę-

cū, cōveniētes tamē ſtatib⁹ eorū, quibus dōnātur. Ita qd, non erit *cleric⁹* maxime in *curia cōmunis bāci*, licet inhiā⁹, quin anulū ipſe recipiet conveniētē gradui ſuo. Et ultra hos ipſi dāt anulos, aliis amicis ſuis. Similiter & *libratam magnam* panni unius ſectæ, quā ipſi tunc diſtribuent in magna abundantia nedū familiarib⁹ ſuis, ſed & amicis aliis & notis, qui eis attendent & miniſtrabūt tēpore ſolēnitatis prędictę Quare, licet in univerſitatibus in gradum doctoratus erecti, expenſas non modicas faciant tēlier price, but agreeable to their eſtates, to whō they are given. Inſomuch that there ſhall not be a Clerk, eſpecially in the court of the common bench, but he ſhall receive a ring conuenient for his degree. And beſides theſe, they give divers rings to other of their friends. They give alſo liveries of cloth of one ſuite or colour in great aboundance, not onely to their houſhold many, but alſo to their other friends and acquaintance, which, during the time of the foreſaid ſolemnity, ſhall atted and waite upon them. Wherefore, though in the Univerſities, they, that are promoted to the degree of Doctors, do ſuſtain no ſmall charges at the time of their commence-

mencement as in giving of bonets and other rich gifts, yet they give no gold, nor do bestow any other gifts or costs like unto these expenses. Nether in any countrey of the world, is there any speciall degree given in the Laws of the same Land, but onely in the realm of England. Nether is there any man of Law throughout the universal world, which, by reason of his office or profession, gaineth so much as one of these Serjeants. No man also, be he never so cunning and skilfull in the laws of the realm, shall be exalted to the office & dignity of a Justice in the court of pleas before the king, or in the court of the comon bench, which

pore creationis suæ, ac birreta, alia quoque donaria quam bona erogent: non tamen aurum ipsi conferunt aut alia donaria, sumptusve faciunt, his expensis similia. Neque in regno aliquo *orbis terrarum*, datur *gradus specialis* in legibus regni illi⁹, præterquam *solum in regno Angliæ*. Nec est advocatus in universo Mundo, qui ratione officii sui, tantum lucratur, ut *serviens* hujusmodi. Nullus etiam, licet in legibus regni illius scientissimus fuerit, assumetur ad *officium* & *dignitatem justiciarii*, in *curiis placitorum coram ipso Rege*, & *communis banci* quæ

sunt

ſunt ſupremæ curiæ ejuſdem Regni ordinariæ, niſi ipſe primitus ſtatu & gradu ſervientis ad legem fuerit inſignitus. Nec quiſquam, præterquã *ſerviens* talis in *curia communis banci*, ubi *omnia realia placita* placitantur, placitabit. Quare ad *ſtatum & gradum* talem, nullus hucuſque aſſumptus eſt, qui nõ in prędicto generali legis ſtudio, *ſexdecim annos* ad minus, antea complevit, & in ſignum, quod omnes *juſticiarii* illi taliter extant graduati, quilibet eorum ſemper utitur dum in curia regis ſedet, *birreto albo de ſerico*, quod primum &

are the chief ordinary Courts of the ſame realm, unleſs he be firſt promoted to the ſtate & degree of a Serjeant at Law. Neither ſhal any man, but onely ſuch a Serjeant, plead in the Court of the Common bēch, where all reall actions are pleaded. Wherefore to this ſtate and degree hath no man been hitherto admitted, except he hath firſt continued by the ſpace of ſixteen years in the ſaid generall ſtudy of the law, and in token or ſigne, that all Juſtices are thus graduat, every of them always, while he ſitteth in the Kings court, weareth a white Quoife of ſilke: which is the principal and chief

insignement of habite, where with Serjeants at law in their creation, are decked: and neither the Justice, nor yet the Serjeant, shall ever put off the quoife, no not in the kings presence, though he be in talk with his majesties highnesse. Wherefore, most noble Prince, you cānot hereafter doubt, but that these lawes, which so singularly above the Civill lawes, yea, and above the laws of all other Realms are honored, and with so solemn a state of such, as are learned therein, & do profess the same, are worthyed must needs be precious, noble and high, and of great excellencie, and of spectall knowledge and vertue.

preciuum est de insignib⁹ habit⁹, quo *servientes* ad legē, in eorū creatione, decorantur. Nec *birretū* illud *Justiciari⁹* sicut nec *serviēs* ad legē unquam deponet, quo caput suū in toto discooperiet, etiam in *præsentia regis* licet *cum celsitudine* sua ipse loquatur. Quare, *Princeps preclarissime*, tu amodo hæsitare non poteris, quin leges istæ quæ tam singulariter supra civiles leges, leges etiam omnium aliorum regnorum honorātur, & tam solemni statu eruditorum & ministrantium in eis venerantur, *præciosæ* sint, *nobiles*, & *sublimes*, ac magnæ *præstantiæ*, maximæque *scientiæ & virtutis*.

¶ Chap.

¶ Chap. 51. *After what manner a Juſtice is created, and of his habite and converſation.*

SEd ut *Juſticiariorum* (ſicut & *ſervientum ad legem*) ſtatus *Tibi* innoteſcat, eorum *formam officiumque* (ut potero) jam deſcribam. Solent namque in *communi Banco quinque Juſticiarii* eſſe, vel *ſex* ad majus: Et in *Banco Regis quatuor* ad *quinque*, ac quoties eorum aliquis per mortem vel aliter, ceſſaverit, Rex, de adviſamento conſilii ſui, eligere ſolet unum de *ſervientibus ad legem* & eum per *literas* ſuas *patentes* conſtituere in *Juſticiarum*, loco judicis ſic ceſſantis, & tunc Cancel-

But to the intēt the ſtate of Juſtices as well as the Serjeants at Law, may be knowen to your grace, as I can, I will deſcribe unto you their form and office. In the comon bench there are cuſtomable v. Juſtices or ſix at the moſt. And in the Kings bēch iiii. or five. And as oft as the place of any of them by death or otherwiſe, is void, the King uſeth to chooſe one of the Serjeaunts at Law, and him by his Letters Patents, to ordain a Juſtice, in the place of the Judge ſo ceaſing, And then the Lord Chancellour of England

land shall enter into the Court, where the Justice is so lacking, bringing with him those letters patents, & sitting in the middest of the Justices causeth the Serjeant so elect to be brought in, to whom in the open Court he notifieth the Kings pleasure touching the Office of the Justice then void and causeth the foresaid letters to be openly read. Which done, the Master of the Rolls shal read before the same elect person, the oath that he shall take, which when he hath sworn upon the holy Gospell of God, the Lord Chancellor shall deliver unto him the Kings letters aforesaid, And the Lord Chief Justice of the Court shall assign unto him a

lari⁹ Angliæ adibit *curiã*, ubi *justic'* sic dict̃, deferẽs secum literas illas, ac sedẽs in medio justic⁹ Introduci facit serviẽ tẽ sic electũ, cui in plena curia, ipse notificabit voluntatẽ regis, de officio, judiciario sic vacãte, & legi faciet in publico literas perdictas: Quo facto, *custos rotulorũ cancellariæ regis* leget corã eodẽ electo, *jusjurandum* quod ipse facturus est, qd & cum super *sancta Dei Evangelia* ipse juraverit, *Cancellarius* sibi tradet literas regis perdictas, & capitalis justiciarius, curiæ illius assignabit sibi

locum

locū in eadē, ubi deinceps ille ſedebit, & mox eū ſedere faciet in eodē. Sciēdū tamē *tibi* eſt, *Princeps*, quod *Juſticiarius* iſte inter cętera tūc jurabit: *ſe juſticiā miniſtraturū indifferenter omnibus hominib⁹*, corā eo placitātib⁹, inimicis & amicis, nec ſic facere differet, etiamſi rex per literas ſuas, aut ore tenus contrariū juſſerit. Jurabit etiā qd extunc non recipiet ipſe ab aliquo prætерquam a *rege*, *feodum*, aut *penſionē* aliquā, ſeu *liberatā*, neq; donū capiet ab habente placitū coram eo, prætерquam eſculenta & poculenta

place in the ſame, where he ſhal then place him, and that place ſhall be afterward keep. Yet you muſt know, moſt noble Prince, that this Juſtice ſhall then amōg other things, ſwear, that he ſhall indifferently miniſter Juſtice to all men, as well foes as friends, that ſhall have any ſuite or plea before him. And this ſhall he not forbear to do though the king by his letters, or by expreſſe word of mouth, would command the contrary. He ſhall alſo ſwear that from that time forward, he ſhal not receive or take any fee, or pēliō, or livery of any man but of the King only, nor any gift, reward or bribe of any man having ſuite or Plea before him, ſaving meat and drink

drink, which shall be of no great value. You shall also know, that a Justice, thus made, shall not be at the charges of any dinner or solemnity, or any other costs at the time when he taketh upon him his Office and dignity. For so much as this is no degree in the faculty of the Law, but an office onely and a room of authority, to continue during the kings pleasure, Howbeit the habite of his raiment, he shall from time to time forward, in some points change, but not all the enssignements thereof.

For being a Serjeaunt at Law, he was clothed in a long robe pretty like, with a Furred Cape about his shoulders, and thereupon a Hood with

fēta, quæ nō magni erūt precii. Sciēdū etiā tibi est quod *Iusticiar'* sic creat', cōvivīū, solēnitatēve, aut sūptus aliquos, nō faciet tempore, susceptionis officii & dignitatis suæ, cū non sint illa *gradus* aliqui in *facultate legis*, sed *Officiū* suum illa sint & *magistratus*, ad regis nutum duratura, *habitū* tamen *indumenti* sui (in quibusdā) ipse extunc mutabit, sed non in omnibus insigniis ejus. Nā *serviens ad legem* ipse existens *roba longa* ad instar sacerdotis, *cum capicio penulato* circa humeros ei⁹ & desuper *collobio*, cum

duo-

duob⁹ *labelulis*, qua literuti ſolẽt doctores legũ in univerſitatib⁹ quibuſdã, cũ ſupra deſcripto *birreto* veſtiebatur. Sed *Juſtic'* fact⁹, loco collobii, *clamide* induetur, *firmata ſuper humerũ ei⁹ dexterũ*, cæteris ornamentis ſerviẽtis adhuc permanentibus, excepto quod *ſtragulata veſte*, aut *coloris bipertiti*, ut poteſt *ſerviens*, *Juſticiarius* non utetur, & *capicium* eius non alio quam *menevero* penulatur, *Capicium* tamen *ſervientis pellibus agninis* ſemper *albis* implicatur qualem *habitum* te plus ornate optarẽ,

two Labels, ſuch as Doctours of the Laws uſe to wear in certain Univerſities, with the above deſcribed Quoyfe. But being once made a Juſtice, inſtead of his Hood, he ſhall wear a Cloak cloſed upon his right ſhoulder, all the other Ornaments of a Serjeannt ſtill remaining: ſaving that a Juſtice ſhall wear no party-coloured Veſture as a Serjeant may, And his Cape is Furred with none other then Meneuer, whereas the Serjeants Cape is ever Furred with white Lambe. And this Habite I would with your Grace to bring into high eſtimation,

when

when it shall be in your power, for the worthy of the state of the Law & the honour of your Realm. Furthermore I would ye should know, that the Iudges of England sit not in the kings courts above iii. hours in a day, that is to say, from viii. of the clock in the forenoone til xi. compleat, For in the afternoones, those courts are not holden or kept. But the Suters then resort to the perusing of their writings, & elsewhere consulting with the Serieants at law, and other their Counsellors. Wherefore the Iustices, after they have taken their refection do pass & bestow all the residue of the day in the study of the Laws, in reading of holy Scripture, and using

cū potestas tibi fuerit, ad decorē status legis & honorē regni tui. Scire te etiam cupio, quod iusticiarii Angliæ nō iudēt in curiis regis, nisi *per tres horas in die s. ab hora viii. ante meridiē, usque horam xi. completam*, quia *post meridiem curiæ ille non tenentur*. Sed *placitantes* tunc se devertunt *ad pervisum*, & alibi consulentes cum servientibus ad legem & aliis consiliariis suis. Quare *Iusticiarii*, postquam se refecerint, totum diei residuum pertrāsēunt, studendo in *legibus*, *sacram* legē lo *scripturam*, & aliter ad

eorum libitū cōtemplādo, ut vita ipſorū pl' contēplativa videatur quā activa. Sicq; quietā illi vitā agunt ab omni ſolicitudine & mundi turbinibus ſemotā: nec unquā cōpertū eſt eorum aliquem, donis aut munerib' fuiſſe corruptū. Unde & hoc gen' gratiæ vidim' ſubſecutum, quod *vix eorū aliquis ſine exitu decedat*, quod juſtis magnæ & quaſi appropriatæ benedictionis Dei eſt, mihi quoq; non minimi muneris divini cenſetur eſſe penſandū, quod *ex judicum ſobole, plures de proceribus & magnatibus*

other kind of contemplation at their pleaſure, ſo that their life may ſeem more contemplative then active. And thus do they lead a quiet life diſcharged of all worldly cares and troubles: And it hath never been known, that any of them hath been corrupt with gifts or bribes. Whereupon we have ſeen this kinde of grace following, that skant any of them dieth without iſſue, which unto juſt men is a token of the great and peculiar bleſſing of God. And in mine opinion it is to be judged for no ſmall point of the bountifull goodneſs of God, that out of the generation of Judges there have hitherto ſprung up moe States and Peers

of

of the Realm, then out of any other ſtate of men: which by their own wit & policy have aſpired unto great wealth, nobility & honour. Yea, though the ſtate of Merchants ſurmount the nũber of Judges by many thouſands, being men of ſuch ſingular wealth, that among them commonly there be ſuch, as one of them in riches paſſeth all the Juſtices of the Realm. For this cãnot be aſcribed unto fortune, which is nothing, But it is to be attributed (as I take it) only to the bleſſing of God. Forſomuch as by his Prophet he ſaith, that the generatiõ of righteous men ſhall be bleſſed. And the Prophet in another place, ſpeking of juſt men, ſaith,

regni hucuſque prodierunt, quam de aliquo alio ſtatu hominum regni, qui ſe prudentia & induſtria propria opulentos, inclitos, nobileſque fecerunt. Quanquam *mercatorum ſtatus*, quorũ aliqui ſunt qui omnib' *juſticiariis*, regni præſtãt divitiis, judicũ numerũ in millibus hominum excedat. Ni fortunæ, quæ nihil eſt, iſtud aſcribi nõ poterit: ſed divinæ ſolũ benedictioni fore arbitror tribuẽdum. Cum ipſe per *prophetã* dicat: quod *generatio rectorum benedicetur*. Et alibi de juſtis loquens *propheta* ait,

quod *filii eorum in benedictione erunt*: *Dilige* igitur, (*fili Regis*) *juſticiam*, quæ ſic ditat, colit, & perpetuat ſetus colentium eam. Et *zelator eſto legis*, quæ juſtitiam parit, ut *à te* dicatur, quod *à juſtis* ſcribitus: *& ſemen eorum in æternum manebit.*

that their children ſhall be in bleſſing. Wherefore, O moſt magnificēt Prince, be you in love with juſtice, which thus enricheth, exalteth to honor & adbāceth to perpetuity the children of them that have her in veneration. And be you a zelous lover of the Law, the very welſpring of juſtice, that by you it may be ſaid that it is written of the righteous, And their ſeed ſhall remain for ever.

¶ Chap. 52. *The Prince findeth fault with delayes, that are made in the Kings Courts.*

PRinceps. Unū ā ſolū ſuppeſ, Cācellarie, declarādū. quo parūper adhuc fluctuat, inquietatur quoq; mens mea, In quo, ſiēā ſolidaveris, nō amplius te quę ſtionibus fatigabo.

THere remaineth now but one thing, good Chauncellour, quod the Prince, to be declared, wherewith my mind ſomewhat yet wavereth and is diſquieted, wherein if you ſtay and ſatisfie me, I will trouble you with no mo

mo queſtiõs. The Laws of England as the repoꝛt goeth, ſuffer great delays in their pꝛoceſſes, moꝛe then the Laws of other Nations, which unto ſuters is not onely a hinderance of their right, but alſo many times an impoꝛtable burden of charges, and chiefly in thoſe actions, wherein dammages are not alloẅad.

Dilationes ingẽres, ut aſſeritur, patiuntur leges Angliæ in proceſſib⁹ ſuis pluſquam leges aliarum nationum qd petẽtib⁹, nedũ juris ſuĩ prolatio eſt, ſed & ſumptuũ quãdoque importabile on⁹, & maxime in actionibus illis in quibus damna petentibus non redduntur.

¶ Chap 53. *Delayes, that happen in the Kings Courts are neceſſary and reaſonable.*

IN actions perſonall, quod the Chancellour out of Cities and Townes of merchandize, where the manner of pꝛoceeding is according to the cuſtoms and liberties of the ſame, there the pꝛoceedings are oꝛdinary. And though they ſuffer great

CAncellarius, In *actionibus perſonalibus* extra *urbes* & *villas* mercatorias, ubi proceditur *ſecundum conſuetudines & libertates earundem*, proceſſus ſunt ordinarii. Et quantaſlibet dilati-

ones patiuntur, nõ tamen *exceſsiuas*. In urbibus verò & villis illis, potiſſimũ cũ urgens cauſa depoſcat, celeris, vt in aliis mũdi partib' fit proceſſus nec tamẽ (ut alibi) ipſi nimiũ aliquãdo feſtinãtur, quo ſubſequitur partis læſio. Rurſus in *realib' actionib'* in omnib' fere mundi partib', moroſi ſunt proceſſus ſed in Anglia, quodãmodo *celeriores*. Sunt quippe ì regno *Franc'* in curia ibidem ſuprema quæ *curia Parliamẽti* vocitat' proceſſus quidã, qui in ea pl' quã *triginta* annis perpẽderunt. Et novi ego appellati-

delays, yet they be not exceſſive. But in the ſame Cities and Towns chiefly when any urgent cauſe ſo requireth, there is quick diſpatch made like as in other parts of the world, and yet not with ſuch hot haſte as in ſome other places, that the party be thereby endammaged. Again, in actions reall, the proceedings are very ſlow, almoſt in all parts of the world, but in England, ſomewhat ſpeedier. For, within the Realm of France, in the higheſt Court there, which is called the Court of Parliament, there be certain proceſſes that have hanged there above thirty years. And I know that a cauſe of appeal, which

in

in the court betweē Rich. Heron an English merchāt, & other merchāt men for a transgression made, hath bin debated within the jurisdiction of that court hath already hāged by the space of x. yéers, and it is not yet like. that it cā be decided within other x. yeers: While I was lately abiding in Paris, mine Hoste shewed me his processe in writing, which in the court of Parliament there he had then followed full 8. yeers, for 4 s. rent, which in our money maketh not above 8 d. and yet he was in no hope to obtain judgment in 8. yéers more: and I know other cases there like unto these, So that the Laws of Englād, as seemeth to me, cause not so great delays,

onis causā unā, q; in curia illa agitata fuit, jā per decē an. suspēsā fuisse & adhuc verisimile, non est, eā infra annos x. alios posse decidi. Ostēdit & mihi dudū, dū *Parisiis* morabar, hospes meus processum suum in scriptis, qui in curia parliamēti ibidē ipse tūc 8. an. pro 4 s. reddit⁹, qui de pecunia nostra 8 d. nō excedūt prosecut⁹ est, nec speravit se in 8. ann. aliis judicium inde obtēturum. Alios quoq; nōnullos novi casus ibidē, his similes, sic qd. leges *Angliæ non tantas*, ut mihi visum est, *dilationes sortiuntur ut*

faciũt leges regionis illi⁹. Sed revera per necessariũ est, *dilationes* fieri in processib⁹ õniũ actionũ, dũmodo nimiũ ipsæ non fuerint excessivæ. Nam sub illis *partes* & maxime *pars rea*, quã tẹ̃ e sibi providẽt de defensionib⁹ utilibus, similiter & consiliis, quib⁹ alias ipsi carerẽt. Nec unquã in judiciis tãtũ imminet periculũ, *quantũ parit processus festinatus*. Vidi nẽpe quondã apud civitatẽ *Sarũ*, corã *judice* quodam ad gaolã ibidẽ deliberandã, cum clerico suo assignato, mulierem de morte mariti sui *infra annum*,

as do the Laws of that countrey. But to speak uprightly it is necessary that delaies be had in the processes of all nations, so that the same be not too much excessive. For by reason thereof, the parties, and chiefly the party defendã, do oftentimes provide, themselves of good defences, and also of counsels, wch else they should lack. And in judgements, there is never so great danger toward, as when processe goeth forward with over much haste. For I saw once in the City of Salisbury, before a certain Judge, at a gaole delivery there, with the Clerk of the assises, a woman attainted and burned for the death of her husband within a year

after

after he was slain, In the which case, it was in the Judges power to have reprived, or respected the womās araignment till the end of the yeer, And about a yeer after that, I saw one of the servants of the slain man convict before the same Justice, of the death of the same his master. Who then openly confessed, that he himself alone slew his master; & that his master his wife, which before was burned, was altogether innocent of his death. And hee for the same was drawn and hanged. And still even at the point of death he lamented the woman burned, as one clear from that offence.

de interfectione ejꝰ *attictā similiter & cōmbustam*, in quo casu licuit, judici illi, usq; post annum illū arretamentū sive disrationē mulieris illius respectuasse, & post annū illū, vidi unū de serviētibꝰ interfecti illiꝰ corā eodē justiciario, de morte ejusdē magistri sui cōvictum, qui tunc publice fatebatur, ipsummet solum magistrum suum occidisse, & magistram suam, uxorem ejus, tunc combustam, innocentē omnino fuisse de morte ejus: quare ipse *tractus* & *suspensus* fuit. Sed tamē omnino, etiā in ipso mortis articulo, mulierem combustam immunem à crimine illo fuisse, ipse lugebat.

O

O quale putā tū eſt ex hoc facto conſcientiæ diſcrimē & remorſum eveniſſe juſticiario illi tā præcipiti, qui potuit proceſsū illū juſte retardaſſe? Sępius proh dolor ipſe mihi faſſus eſt, qd nunquā in vita ſua animū ejus de hoc facto ipſe purgaret: *crebro* etenim *in deliberationibus, judicia maturescunt*: Sed *in accelerato proceſſu, nunquam*. Quare *leges Angliæ eſſonium admittunt*, qualia non faciunt leges aliæ mundi univerſi. Non ne quam utiles ſunt *vocationes ad warrantum*? *Auxilia* de his ad quos ſpectat *reverſio tenementorū*, qui in placitum deducunt, & qui habent eviden-

O what perplexity & remorſe of conſcience it is to be thought, that this ſo haſty a Juſtice had of this deed, which might juſtly have ſtated the proceſſe? He himſelf (alas) often confeſſ'd unto me that he ſhould never during his life be able to clear his conſcience of this fact: For many times, in deliberations, judgements grow to ripenes: but in overhaſty proceſs, never. Wherfore the Laws of England admit eſſoyn, and ſo do no other lawes of all the world. Are not vouchings to warrant right profitable, are not the aides of them profitable to whom the reverſion of tenements brought in plea belongeth, and which have the eviden-

evidences of the same. Are not also the aides of copartners profitable, which shall pay according to the rate of a tenement, allotted to their copartner by force of the Law evicted from him, And yet all these are delays, as you, most noble Prince, by my talk at other times doe well know: and the like delays to these doe no other Laws admit, neither do the Laws of England admit trifling and unfruitful delays. And if any such fond delays should be used they may at every Parliament be cut away. Yea, and other Lawes used in the same Realm, when in any point they begin to halt, they may at every

tias eorundē. *Auxilia* etiā *de copertic-bus* qui reddent pro rata, si tenemētū coparticipi allotatū, evincatur, & tamen hæc *dilationes* sunt, sicut, *tu Princeps*, alias nosti ex doctrina mea: & dilationes his similes, leges aliæ nō admittūt, neq; leges Angliæ frivolas & infructuosas permittunt inducias. Et si quæ in regno illo dilationes in placitis, minus accōmodæ, fuerint usitatæ, in omni parliamento amputari illæ possunt, etiam & omnes leges aliæ, in regno illo usitatę, cum in aliquo claudicaverint, in

omni

omni Parliamento poterunt reformari. Quo recte cõcludi poteſt, quod *omnes leges regni illius optime ſunt, in actu vel potentia*, quo facilius in actũ duci poterunt & in aſſentiam realẽ. Ad quod faciendum, quoties æquitas id poposcerit, ſinguli reges ibidem, ſacramento aſtringuntur ſolemniter prętito tempore receptionis diadematis ſui.

Parliament be reformed. Wherefore, it may well be concluded, that all the Laws of that Realm are right good, either in deed, or in poſſibility, So that if they be not preſently good, they may eaſily be reduced to the preſent perfection of goodneſſe. To the performance whereof, as oft as equity ſo requireth every king there is bound by an oath ſolemnly taken at the time of his Coronation.

¶ Chap. 45. *The Laws of England are right good, the knowledge whereof is expedient for kings. Yet it ſhall ſuffice them to have but a ſuperficiall knowledge of the ſame.*

P *Princeps.* Leges illas, nedum bonas ſed & optimas

I have well & evidently perceived of the prince by the proces of your talk good

good Chancellour, that those Laws are not only good but also of most perfect & excellent goodness. And if any of them have need to be amended, that may quickly be done as the forms & orders of the parliaments there do plainly prove. Wherefore the realm is ever really, or potentially governed by most excellent and most worthy Laws, and I doubt not, but that your instructions, in this our talk, shall be profitable for the kings of England, which hereafter shall be: so that they have no pleasure in governing by unpleasant laws. For the unhantonness of the tool or instrument weareth the workman: & a blunt pike or a dull sword maketh a cowardly souldier.

esse cancellarie, ex prosecutione tua in hoc dialogo certissime deprehendi. Et siq; ex eis miliorari deposcant, id citissime fieri posse, parliamento rum ibidē formulę nos erudiunt. Quo, realiter, potēti aliterve, regnum illud temper prestātissimus legibus gubernator, nec tuas in hac concionatione doctrinas, futuris Angliç regib⁹, inutilis fore cōjicio, dum nō delectet regere legibus, que non delectant. *Fastidit* namq; *artificem, ineptio instrumenti: & militē ignavum reddit debilitas lanciæ & mucronis.*

Sed

Sed ſicut ad pugnã animatur miles, cũ, nedũ ſibi prona ſint arma ſed & magis, cum in actib⁹ bellicis ipſe ſit expertus, dicẽte Vegetio de re militari qd, *ſcientia rei bellicæ, dijudicãdi audaci nutrit.* (Quia nemo facere metuit qd ſe bene didiciſſe confidit) Sic & Rex omnis, ad juſtitiam animatur, cũ leges, quibus ipſa fiet, nedum juſtiſſimas eſſe agnoſcit, ſed & earum ille expert⁹ ſit formam & naturã, quas tantum in univerſali, inclusive & in confuſo, *Principi* ſcire ſufficiet, remanente ſuis *judicibus*, earum diſcreta de-

But like as a ſouldier is encouraged to fight, not only when he hath handſom & fit weapõs in a redines, but alſo much more, when he is expert and ſkilful in warlike acts, according to the ſaying of Vegetius in his book of Chivalry, that knowledg & cunning in Martial feats miniſtreth boldnes in fighting (for no man feareth to do that wch he truſteth he hath well learned) in like manner every King hath a fervent zeal, and earneſt deſire to the maintenance of Juſtice, not only knowing the Laws, whereby that muſt be done, to be moſt juſt, but alſo being skilfull in the form and nature of the ſame: Wherof it ſhall ſuffice the Prince to have only an univerſal, a ſuper-

ficial

ficiall & a confuſe knowledge, the diſcreet & determinate perfectneſs, & deep underſtãding of the ſame, being left to his Judges. So alſo, ought all princes to be well ſeen in the holy ſcriptures of God, as ſaith Vincentius Beluacenſis in his book of the Moral inſtitution of Princes. Forasmuch as the Scripture above mẽtioned ſaith, that vain are all they, in whom is not the knowledge of God, and for that in the fifteenth Chapter of the Proverbs it is thus written: Let prophecie, or the Word of God, be in the lips of the King, & then his mouth ſhall not go wrong in judgement. And yet is not a King bound to have profound knowledge and determinate underſtan-

terminataque peritia & ſciẽtia altiori. Sic equidẽ & *ſcripturarum divinarum peritiam*, ut dicit *Vincentius Beluacenſis* in libro de *Morali inſtitutione Principum*, Omnis princeps habere deberet, cum dicat ſcriptura ſuperius memorata, quod *vani ſunt omnes, in quibus non eſt ſcientia dei*, & *Prover.* xvi. ſcribatur: *Divinatio*, id eſt, divina ſententia, vel, ſermo divinus, *ſit in labiis regis*: & tunc *in judicio non errabit os ejus*. Non tamẽ profunde, determinate, ve intelligere tenetur *Princeps* ſcripturas

turas sacras, ut docet *sacræ Theologiæ professorem*: sufficit namque ei, earum in confuso degustare sentētias, qualiter & peritiā legis suæ. Sic & fecerunt *Carolus Magn'*, *Lodovic'* filius ejus, & *Robertus* quondā rex *Frāciæ*, qui hæc scripsit sequētiā (*Sancti spirit' adsit nobis gratia*,) & quā plures alii, ut in xv. c. lib. prædicti *Vincentius* prædictus luculenter docet. Unde & doctores legum dicūt: qd *Imperator gerit omnia jura sua in scrinio pectoris sui*, non quia omnia jura ipse noscit realiter & in actu sed dum principia

ding in the holy Scriptures as it becometh a professour of Divinity: For it shall be enough for him superficially to taste the sentences thereof, as also of his Laws. Thus did Charls the great Lewes his sonne, and Robert sometime King of France who wrote this sequence. (Sancti Spiritus adsit novis gratia) and divers other Princes, as the foresaid Vincentius in the fifteenth Chapter of his Book aforesaid plainly sheweth. Wherefore the Doctors of the Laws do say that an Emperour beareth all his Laws in the box of his breast: not for that he knoweth all the Laws really and indeed, but for that he understan-

standeth the Principles of them, likewise their forme and their nature in which respect he is judged to bee skilfull in all his Lawes, Which also he may alter, change, and repeale: So that in him are potentially all his lawes, as Eve was in Adam before she was made. But now, good Chancellour, seeing I perceiv my selfe sufficiently perswaded to the studie of the lawes of England, which thing in the beginning of this worke you promised to performe, I will no longer trouble you in this behalfe, But thus I instantly desire you that ye will instruct mee in the principles of the Lawe, as you once began to do: and that you will teach

corum ipse præcepit, ordinā similiter & naturā, omnia jura sua ipse intelligere censetur, quæ etiam cū formare ille potest, mutare & cessare: quó in eo potētialiter sunt omnia jura sua, *ut in Adam erat Eva, antequam pasmaretur.* Sed quia Cancellarie, ad legum Angliæ disciplinatum mihi jam conspicio sufficienter esse suasū, quod & in hujus operis exordio facere promisisti: Non te amplius hujus prætextu. solicitare conabor, sed obnixè deposco, ut *in legis hujus principiis*, ut quōdā incepisti, me erudias

dias: docēs quodā-modoejus agnoſcere formā & naturam, quia *lex iſta* mihi ſēper peculiaris erit *inter cæteras leges orbis*, inter quas ipſā lucere cōſpicio, ut *lucifer inter ſtellas*. Et dum intentioni tuæ qua ad collationem hanc concitatus es, jam ſatisfactum eſſe non ambigo, tempus poſtulat & ratio, ut noſtris colloquiis terminum cōferamus: reddentes ex eis, laudes ei & gratias, qui ea incepit, proſecutus eſt, & finivit *Alpha* & *O.* quem dicimus, quem & laudet omnis ſpiratus. Amen.

mee to knowe and underſtand the forme and nature thereof. For this Lawe, ſhall be evermore peculiar to me among all other Lawes of the world, among the which I ſee it ſhine, as Lucifer among the Starres. And forſomuch as I doubt not but your intent, whereby you were mooved to this conference, is fully ſatisfied: both time and reaſon requireth, that we make an end of our talke, yeelding therefore lauds and thanks to him, which beganne furthered, and hath finiſhed the ſame, Whom we call Alpha and O. who alſo bee praiſed of every living creature. Amen.

FINIS.

The Table.

AN *Introduction to the matter.* Fol. 3
The Chancellour moveth the Prince to the knowledge of the Law. 4
The Princes reply to the motion 7
The Chancellour fortifieth his assertion. 8
The Chancellour proveth that a Prince by the Law may be made happy and blessed. 10
Ignorance of the Law causeth contempt thereof. 14
The Chancellour briefly repeateth the effect of his perswasion. 17
The Prince yeeldeth himself to the study of the Lawes, though he be yet disquieted with certain doubts. 19
So much knowledge as is necessary for a Prince is soon had. 20
A King whose government is politique cannot change his Laws. 25
The Prince demandeth a question 27
The answer is omitted for that in an other work it is handled at large. 28

How kingdoms ruled by royall government onely first began. 28

How kingdomes of politique gevernance were begun 30

The Prince compendiously abridgeth all that the Chancellour before hath discoursed at large. 33

All Laws are the Law of Nature, Customes, or Statutes. 36

The Law of Nature in all Countries is one. 37

The Customes of England are of most ancient antiquity, practised and received of five severall Nations from one to another by succession. 38

With what gravity Statutes are made in England. 39

A meane to know the diversity between the Civill Laws and the Laws of England. 41

The first case wherein the Civill Laws and the Laws of England differ. 42

Inconveniences that cometh of that Law, which no otherwise then by witnesses admitteth trialls. 43

Of the cruelties of Racking. 46

The Civill Law oft faileth in doing of Justice. 50

How Counties are devided and Sheriffs chosen. 51

How

How Jurers muſt be choſen and ſworn. 54

How Jurers ought to be informed by evidences and witneſſes. 57

How cauſes criminall, are determined in England. 61

The Prince granteth the Lawes of England to be more commodious for the ſubjects, then the Civill Lawes in the caſe diſputed. 63

Why Enqueſts are not made by Juries of xij men in other Realms, as well as in England. 65

The Prince commendeth the Laws of England of their proceeding by Juries 69

The Prince doubteth, whether this proceeding by Juries be repugnant to Gods Law, or not. 70

That the proceeding by a Jury, is not repugnant to the Law of God.

Why certain Kings of England have had no delight in their own Laws. 76

The Chancellour openeth the cauſe which the Prince demandeth. 77

The inconveniences that happen in the Realm of France, through regall government alone. 79

The commodities that proceede of the joynt government politique and regall, in the Realm of England. 83

A compariſon of the worthineſs of both the regiments. 86

The Prince breaketh the Chancellour off his tale. 89

The ſecond caſe, wherein the Civill Lawes, and the Lawes of England, diſagree in their judgements. 89

Speciall cauſes why baſe borne children are not legitimate in England by matrimonie enſuing. 93

The Prince alloweth the Lawe, which doth not ligittimate children born before matrimonie. 98

The third caſe wherein the Lawes aforeſaid diſagree. 98

The Prince approveth the Law, whereby the iſſue followeth not the womb. 103

The fourth caſe wherein the ſaid Laws varie. 104

The Prince commendeth the education of Noble mens children being Orphanes. 106

Other caſes wherein the aforeſaid Laws differ. 108

The Prince regardeth not the caſes laſt rehearſed. 109

The Chancellour ſheweth why the Laws of England are not taught in the Univerſities. 110

The diſpoſition of the generall ſtudie of the Laws of England, and that the ſame in number paſſeth certain Univerſities. 113

Of

Of the eſtate and degree of a Serjeant at Law, and how he is created. 116

After what manner a Juſtice is created, and of his habite and converſation. 121

The Prince findeth fault with delayes that are made in the Kings Courts. 125

That delayes which happen in the Kings Court are neceſſary and reaſonable. 129

That the Laws of England are right good, the knowledge whereof is expedient for Kings, and that it ſhall ſuffice them to have but a ſuperficiall knowledge of the ſame. 129

FINIS.

Notes upon Sir *John Forteſcue* Knight, Lord Chief Juſtice of *England*.

De laudibus legum Angliæ.

Ad CAP. III

1. *Victore cauſarum.*] Queſtionleſs he meant the author of the little book *De cauſis*, put in ſome latine editions at the end of *Ariſtotle*'s works with ſome other ridiculouſly attributed to *Ariſtotle*. There are, who think it to be done by *Alpharabius*, others by *Avempace*, others by *Proclus*. It was turn'd out of Hebrew into Latine, but is not extant in *Ariſtotles* language. It's ancient, but clearly beneath the age of *Ariſtotle*. In *propoſit.* 1. The ſubſtance is of what he cites.

Ad

Ad CAP. VIII.

2. *Apprenticios,*] From *Apprendre*, i. *to learn*, comes *Apprentice de la ley*; which will denote as much as *Discipulus*, applied by *Justinian* to somewhat a like degree in his law. For after he had reckon'd his *Dupondii* of *Justiniani novi* (that is, students of two yeers standing) his *Papinianists* (students of three years) his *Lytæ* (those of four years) and his *prolytæ* (for them of five) to whom the reading of the whole course of that law and an able understanding was imputed, he then, comprehending the *prolytæ*, and the rest laboring to that degree, addes; *Discipuli igitur omnibus eis legitimis arcanis reseratis, nihil habeant absconditum*, but that they might afterward be *Justitiæ satellites & judiciorum optimi tam athletæ quam gubernatores, in omni loco æuoque fælices.* So he writes *C. tit. de veteri jure enucl. l.* 1. *Deo auctore. Sect.* 6. The ancientest mention of an *Apprentice* in this sence which our publisht books have, is in 1. *Ed.* 3. *fol.* 17. *a pl.* 3. But in the monuments of Parliament of 20. *Ed.* 1. extant in the Tower, this testimony is of them: *De Attornatis & Apprenticiis, D. Rex injunxit* Johanni *de* Mettingham *& sociis suis, quod ipsi per eorum discretiones provideant & ordi-*

dinent certum numerum de quolibet comitatu de melioribus & legalioribus & libentius addiſcentibus ſecundum quod intellexerint quod Curiæ ſuæ & populo de regno melius valere poterit & majus commodum fuerit, & quod ipſi quos ad hoc elegerint Curiam ſequantur, & alii non. Et videtur Regi & ejus conſilio quod ſepties-viginti ſufficere poterint,&c. Apponant tamen præfati Juſtitiarii plures ſi viderint eſſe faciendum vel numerum anticipent, & de aliis remanentibus fiat ſecundum diſcretionem Juſtitiariorum. Mention is of them alſo in *Fleta lib.2.cap.37.* Part of that of 20. *Ed.* 1. is tranſcrib'd in the Epiſtle of the 9. reports, where more is out of antiquity touching theſe Apprentices. The name was uſed for Practiſers, and *Apprenticii ad Barros*, are Barriſters in the ridiculous verſes of *Andrew Horn*, before his *Mirrour aux Juſtices*. Theſe are they,

Hanc legum ſummam, ſi quis vult mira tueri,
Perlegat, & ſapiens ſi vult orator haberi;
Hoc Apprenticiis *ad* Barros *ebore munus,*
Gratum juridicis utile mittit opus
Horn *mihi cognomen*, Andreas *eſt mihi nomen.*

This *Horn* lived about *Ed.* 2. His certain age I yet know not. The verſes I tranſcrib'd out of an ancient copy of him, extant in *Bennet* Col-

Colledge Library in *Cambridge*, and written, as it ſeems by the hand, about *Edw.* 3. or *Rich.* the ſeconds time.

3. *Proprio ore nullus Regum Angliæ.*] Yet certainly the Kings themſelves often ſat in Court (in the Kings Bench) and in the rolls of Charters under King *John* and the time neer him, often occur grants that ſuch or ſuch Engliſh ſhould not be impleaded or put to anſwer *niſi coram nobis vel capitali juſtitia noſtra*, and to *Normans*, *niſi coram nobis vel capitali ſeneſcallo noſtro.* For example, in *Rot. Chart.* 1. *Reg. Joh. Chart.* 171. *memb.* 28. the King gives to one *Jacob* a Jew of *London* and a Prieſt of the Jews, *presbyteratum omnium Judæorum totius Angliæ* for life, and the patent hath in it, *prohibemus etiam ne de aliquo ad ſe pertinente ponatur in placitum niſi coram nobis aut coram capitali juſtitia noſtra ſicut Charta Regis Richardi fratris mei teſtatur.* Here *coram capitali juſtitia* is divided from *coram Rege*; the laſt ſignifying before the Kings perſon, although now pleas held in the Kings Bench before the ſucceſſor of the *Capitalis juſtitia*, are entred *coram Rege*, and ſome rolls (as of 44. *Hen.* 3.) have *placita coram Domino Rege de Tempore* Hugonis Bigod *Juſtitiarii Angliæ*, and alſo in the ſame bundle, *Placita coram* Hugone *le* Bigod *Juſtitiario Angliæ.* And *Bracton lib.* 3. *tract. de Actionibus*

cap.

cap. 5. *ſi actiones criminales ſint, in curia Domini Regis debent terminari, & hoc coram ipſo Rege ſi tangant perſonam ſuam.* and in 2. *Ed.* 4. the King ſat in perſon.

Ad CAP. XIII.

4. *Scotiam, quæ ei quondam ut ducatus.*] Of that matter ſee *Guil. Malmesburienſ. de geſt. reg. lib.* 2. *cap.* 6. *Roger. de Hoveden fol.* 311. *b. &* 377. *a & b. &* 461. *Matth. Paris ſub anno* 1072. *&* 1175. *&* 244. *pag.* 208. 872. *&* 1124. *ſub anno* 1252. *Matth. Weſtmonaſterienſ. ſub anno* 1054. and what he hath with *Thomas* of *Walſingham ſub anno* 1290. *& ſeqq.* and *Edward Hall* in his Henry 8. out of old monuments, alſo *Walſingham pag.* 85. 133. *&* 171. *Edit. Francofurt*, and *Florence* of *Worceſter* and *Henry* of *Huntingdon* where they ſpeak of King *Athelestan*, and authority enough will appear againſt what *Buchanan* writes in *lib.* 6. *&* 8. *Rerum Scoticarum*, touching the Engliſh Empire. For authorities in law of the ſame thing, ſee 11. *Edw.* 3. *tit* **Writ** 473. 39. *Edw.* 3. *fol.* 35. *&* 36. 42. *Edw.* 3. *fol.* 2. *b.* 13. *Hen.* 4. *Brook tit.* **Appeal** 153. 6. *Rich.* 2. *tit.* **protection** 46. 8. *Rich.* 2. *tit.* **Continual claim** 13. 13 *Elizab. Dyer fol.* 304. *a Rot. Parlament.* 21. *Ed.* 1. in Arce London fol. 51. *& ſeqq.* beſide divers

vers originals of matters of that Nation yet remaining in the Treasuries of *Records*. Neither is that of *Godfrey* of *Malmesbury* unnecessary to be here remembered. He relates that when *William* II. was offended with *Malcolm* III. of *Scotland*, that he would not *secundum judicium Baronum suorum in curia sua rectitudinem Regibus Anglorum facere*; the Scottish King, *id agere nisi in regnorum suorum confiniis ubi reges Scotorum erant soliti rectitudinem facere regibus Anglorum, & secundum judicium primatum utriusque regni nullo modo voluit, & sic impacati ad invicem discessérunt*. He places this in 7. *Willielmi* 2. When this *Godfrey* lived I know not, his Annales begin with the Saxons, and end in 29. *Hen.* 1. He hath much of Northern matters, and the same that is in *Roger* of *Hoveden* often, and this very passage also is in *Hoveden, pag.* 265.

Ad CAP. XVII.

5. A *Liqui Regum*] But questionless the *Saxons* made a mixture of the *British* customes with their own; the *Danes* with old *British*, the *Saxon* and their own; and the *Normans* the like. The old laws of the *Saxons* mention the *Danish* (Danelage) the *Mercian* law (Percenlage) and the *Westsaxon* law (West-

(Weſtſaxonlage) of which alſo ſome Counties were governed by one, ſome by another. All theſe being conſidered by *William* 1. comparing them with the laws of *Norway* (which he moſt of all affected, mainly, as I think, becauſe by them a Baſtard of a Concubine, as himſelf was, had equal inheritance with the moſt legitimat ſon. You may ſee for it *Roger de Hoveden fol.* 347. & 425.) he *quaſdam reprobavit* (as the words of *Gervaſe* of *Tilſburie* in his Dialogue *de Scaccario* are) *quaſdam autem approbans illis tranſmarinas* Neuſtriæ *leges quæ ad regni pacem tuendam efficaciſſimæ videbantur, adiecit*; but ſo indeed, that ſuch as he in writing allowed, are, by a denomination from the greater part, called, *bonæ & ad probatæ antiquæ regni leges*, by *Matth. Paris* in his Mſ. life of *Fretherique*, Abbot of S. *Albens*; and *leges Edwardi Regis quæ prius inventæ ſunt & conſtitutæ in tempore Adgari avi ſui*, by *Roger* of *Hoveden*; and *leges æquiſſimi Regis Edwardi*, by *Ingulphus*, Abbot of *Crowland*, who lived under the Conqueror, and brought a coppy of them from *London* to his Abbey, as he remembers in his printed ſtory. And in a Mſ. coppy, communicated to me, amongſt divers other, by that living Treaſure of Antiquity and moſt exquiſit monuments, my noble and much deſerving friend Sir *Robert Cotton*, and con-

tinued by *Peter* of *Blois*, after that which is in the print, succeed those laws of *William* 1. there spoken of with this title in broken *French*; Ces sont leis e les Custumes que li Reys William grantast a tut le puple de Engleterre apres la conquest de la terre: ice les meismes que le Reys Edward sun Cosin tint devant lui. Ceo est a savoir. leis a seint Eglise &c. the context of them throughout being much corrupted. They were you see called S. *Edwards* laws, and to this day, are. But clearly, divers *Norman* customes were in practice first mixt with them, and to these times continue, as succeeding ages, so new Nations (coming in by a Conquest, although mixt with a title, as of the *Norman* Conqueror, is to be affirmed) bring always some alteration. By this well considered, That of the laws of this realm being never changed will be better understood.

6. *Et maxime Romani*] Understand not this neither otherwise, but that the *Romans* had their laws in such parts of this land, as they had their most civil government in. I mean in Colonies hither deduced. For every Colony was but as an image of the mother City, with like holy rites, like Courts, Laws, Temples, places of publike commerce, and for the most part with *Duumviri* in stead of Consuls, and

Ædiles

Ædiles and *Decuriones* in lieu of a Senate: and it is clear that divers Colonies from *Rome* were in *Britain*, as at *Camalodunum* (now *Maldon* in *Essex*) that was deduced to be *subsidium adversus rebelles* (as *Tacitus* sayes) *& imbuendis sociis ad officia legum.* And an old inscription remembers one *Aurelius Bassus* to be *Censitor civium Romanorum Coloniæ victri censis quæ est in Britannia Camalodunum.* At *York* was also a Colony, an old piece of money of *Severus*, thus,

COL. EBORACUM. LEG. VI. VICTRIX.

Another inscription is justifying the same in *Camden*, *pag.* 572. although *Aurelius Victor* calls it *Municipium* in his life of *Severus.* Likewise one was at *Chester*, anciently called *Devana*, *Deva*, or *Devuana* (as we see in *Ptolomy* and *Antoninus*) from the River *Dee*, witness an old coin of *Septimius Geta* thus inscribed.

COL. DIVANA LEG. XX. VICTRIX.

And a fragment of a stone in *Bathes* walls hath

DEC. COLONIÆ GLEV. VIXIT.
ANN. LXXXVI.

Giev, is *Gloceſter*, as the moſt learned *Clarentius Camden* teaches. Some think *Colcheſter* had a Colony too. But here are enough to ſhew, that the laws of *Rome* were uſed in *Britain*, as in other places where the *Romans* conquered. *Seneca ad Albinam cap. 7. Hic denique populus Colonias in omnes provincias miſit ubicunque vicit Romanus habitat:* and *Gildas* of this land, *non Britannia ſed Romania cenſebatur.* So one anciently ſpeaking to *Mars*, *Romulus*, and *Claudius* (under whom the firſt Colonies were deduced hither) *in Catalect. vet. Poet. lib. 1. tit. 7.*

Cernitis ignotos Latia ſub lege Britannos.

After *Claudius*, the Britons began to learn the Arts, to exceed the Gaules in wit and learning, and they that at firſt did *Linguam Romanam abnuere* (as *Tacitus* ſpeaks in the life of *Agricola*) did at length *eloquentiam concupiſcere. Inde etiam* (ſays he) *habitus noſtri honor & frequens toga; paullatimque diſceſſum ad delinimenta vitiorum porticus & Balnea & conviviorum elegantiam; idque apud imperitos humanitas vocabatur, cum pars ſervitutis eſſet*: and this is ſpoken of natural Britons, not Colonies. They affected, we ſee, Roman language, Rhetorique, Roman habit, Roman pleaſures, diet, and the

the like. Neither needed *Tacitus* to have mentioned their affecting the laws of *Rome*, when they were ſubject to them as a conquered people. And no doubt is, but they that imitated their Conquerors, and neighbor Colonies in the reſt, were not backward in effecting thoſe laws, for which the languages and rhetorique were moſt uſeful. *Juvenal* ſpeaking of *Gaul*, which he calls in *Satyr.* 7. —— *nutricula Cauſidicorum*, ſaies in *Satyr.* 15.

Gallia Cauſidicos docuit facunda Britannos,
De conducendo loquitur iam rhetore Thule.

The eaſier might the uſe and ſtudy of the laws of *Rome* be received here, after this *Claudius* his conqueſt, in regard that thoſe which before and in ancient time had the determining of controverſies, and the learning of that kind in their hands, were by him forbidden to uſe any longer their Religion, for which they were moſt of all reverenced and regarded. I mean the *Druides*, and when their holy rites were prohibited by the Emperor, it's likely enough that the Nations governed by them in point of law (as the *Gaules* and *Britons* were) grew regardleſs, at leaſt remained nothing ſo reſpectful of them as before, and ſo became prone to receive the laws of *Rome*

which had both conquer'd them, and also taken away the reverence before given to the *Druides*. That the *Druides* before *Claudius* were the Lawyers and determin'd controversies *I. Cæsar* is witness *lib.* 5. and 6. *de bello Gallico*, compared with the Catholique opinion in antiquity of an identity (at least in their office, actions and learning) in *Gaul* and *Britain*. That *Claudius* took away their Religion, *Sueton* is author in his life, *cap.* 25. *Druidarum religionem apud Gallos diræ immanitatis, & tantum civibus sub Augusto interdictam, penitus abolevit*. With him agrees *Seneca* in his *Apocolocyntosis*. It may well enough be imagin'd, that the taking it away in *Gaule* extended to *Britain* which was both the nursery of it, and mother too, as *Julius Cæsar* writes. If onely to *Gaule*; yet it's probable enough that the Druides in Britain could not but suffer by it, at least in reputation. For that of *Pliny nat. hist. lib.* 30. *cap.* 1. *Tiberii Cæsaris principatus sustulit Druidas Gallorum*; it's to be referr'd onely to *Rome* as *Lipsius* well takes it in *Comment. ad Tacit. Annal.* 12. *num.* 98. and in such sense as *Sueton* speaks of *Augustus* his forbidding them *tantum civibus*. And indeed, although after *Claudius*, mention be in *Tacitus*, *Lampridius*, and *Vopiscus* of them, yet shall you not find any sign of their legal power extant either

either in thoſe, or in *Ammianus Marcellinus* that ſpecially remembers them, but onely attributes a ſtudy of the myſteries of nature and a Pythagorical learning to them, under *Conſtantius* and *Julian*, as you ſee in his 15. book. For the matter of Colonies before ſpoken of he that deſires accurate inſtruction of their nature and particular rights, may ſee, beſides what ſuch as writing of the *Roman* State univerſally have of it, *Lipſ. de Magnit. Romana l. 1. c. 6.* & *Marc. Velſer l. 2. Antiq. Auguſtæ Vindelicorum.*

7. *Leges Civiles in quantum Romanorum inveteratæ ſunt.*] The antiquity which he means of our Laws before the Civil of *Rome*, is onely upon theſe conditions. Firſt that the ſtory of *Brute* be to be credited, and then that the ſame kind of law and policy hath ever ſince continued in *Britain*. That ſtory ſuppoſes him here CCC. years and more before *Rome* built. But (with no diſparagement to our common laws) we have no teſtimony touching the inhabitants of the Ile before *Julius Cæſar*, nor any of the name of it till *Polybius*, in *Greek*, nor till *Lucretius* in *Latine*. *Polybius lib. 3.* ſpeaks of the *Britiſh* Iſles, and *Lucretius lib. 6.* hath *Cælum Britannum*. Neither is the book *de Mundo* attributed to *Ariſtotle* of like age with the falſely ſuppoſed author. In that, *Albion* is ſpoken of, but *Polybius* was before that was

ſpoken, if I deceive not my ſelf. All teſtimony of latter time', made of that which long ſince muſt be, if at all it were, is much to be ſuſpected. And though the *Bards* knew divers things by tradition, which they onely ſung, and ſo a ſpecious argument is made uſually for that common ſtory, becauſe they ſung it, yet I ſee not why any, but one that is too prodigal of his faith, ſhould believe it more then Poetical ſtory, which is all one (for the moſt part) with a fiction. For what were *Bards* but ſuch as ſung the praiſes of old ſuppoſed *Heroes* at their pleaſure? As *Athenæus* and *Marcellinus* of them, and, for latter authority, you may ſee in *Leg. Howeli. Dha. cap.* 25. That the chiefeſt dignity amongſt them was the Penkert of the country, whoſe place was of great eminency before others in the Welſh Court, & his office (when the King was pleaſed to hear any ſongs) was *Duo Carmina ſcilicet unum de Deo, alterum de regibus in interiore parte aulæ decantare.* Nor he nor the reſt were bound to truth of Story, but free to uſe invention, which they did in making a founder of the *Britiſh* name out of a community of ſound. 'Twas as eaſie to fetch *Brute* out of *Brutaine*, as its often called, as it hath been to make *Francio* out of *Francia* or *Franci, Hiſpanus* or *Hiſpalus* out of *Hiſpania, Scota* out of

of *Scotia*, *Angela* for a queen out of *Anglia*, *Bato* out of *Batavia*, *Italus* out of *Italia*, and divers ſuch, which are all meer fictions or impoſtures. Scarce indeed is there a Nation in *Europe*, whoſe deduction from a like name of the firſt author, is of ſufficient credit. All teſtimonies any thing neer the ſuppoſed time of thoſe firſt authors being loſt. This writer ſtands on *Brutes* arrival, and ſpeaks of it *Cap.* XIII. Yet if that would make ſo much for this ſide of antiquity of our laws, much more is to be had from the ancient and true origination of the *Britons*, which is from *Japhet* and his Poſterity. See *Camden*, and in the *Greek Scalegeran* Chronicle of *Euſebius*, the *Britiſh* Iſles, with all the Weſt, are given by *Noah*'s laſt will and Teſtament to *Japhet*, But ſo is *Italy* too, and the reſt of *Europe*. This way, might an equally ſtrong argument be for the like antiquity of both laws, of thoſe of *Italy* and *Britain*. And it would be ſuch a one as this author uſes from *Brute*. For queſtionleſs, if *Japhet* and his poſterity poſſeſt theſe parts of *Europe* (as they did) their Government was not without laws. But in truth, and to ſpeak without perverſe affectation, all laws in general are originally equally ancient. All were grounded upon nature, and no Nation was, that out of it took not their grounds; and

nature being the ſame in all, the beginning of all laws muſt be the ſame. As ſoon as *Italy* was peopled, this beginning of laws was there, and upon it was grounded the *Romane* laws, which could not have that diſtinct name indeed till *Rome* was built, yet remained alwayes that they were at firſt, ſaving that additions and interpretations, in ſucceeding ages increaſed, and ſomewhat altered them, by making a *Determinatio juris naturalis*, which is nothing but the *Civil Law* of any Nation. For although the law of nature be truely ſaid Immutable, yet its as true that its limitable, and limited law of nature is the law now uſed in every State. All the ſame may be affirmed of our *Britiſh* laws, or *Engliſh*, or other whatſoever. But the divers opinions of interpreters proceeding from the weakneſs of mans reaſon, and the ſeveral conveniencies of divers States, have made thoſe limitations, which the law of Nature hath ſuffered, very different. And hence is it, that thoſe cuſtoms which have come all out of one fountain, *Nature*, thus vary from and croſs one another in ſeveral Commonwealths. Had the *Britons* received the ten or twelve *Tables* from *Greece* (which in *Rome* was, as *Livy* ſaies, *in immenſo aliarum ſuper alias acervatarum legum cumulo, fons omnis publici privatique juris*) cleerly the interpre-

pretations and additions which by this time would have been put to them here, muſt not be thought on as if they would have fell out like the body of the *Romane* Civil law. Divers Nations, as divers men have their divers collections and inferences, and ſo make their divers laws to grow to what they are, out of one and the ſame root. Infinite laws we have now that were not thought on D. yeers ſince. Then were many that D. yeers before had no being, and leſs time forward alwayes produced divers new; the beginning of all here being in the firſt peopling of the land, when men by nature being civil creatures grew to plant a common ſociety. This rationally conſidered, might end that obvious queſtion of thoſe, which would ſay ſomething againſt the laws of *England* if they could. 'Tis their trivial demand, *When and how began your common laws?* Queſtionleſs its fitteſt anſwered by affirming, when and in like kind as the laws of all other States, that is, *When there was firſt a State in that land, which the common law now governs:* then were natural laws limited for the conveniency of civil ſociety here, and thoſe limitations have been from thence, increaſed, altered, interpreted, and brought to what now they are; although perhaps (ſaving the meerly immutable part of nature) now, in regard

gard of their firſt being, they are not otherwiſe then the ſhip, that by often mending had no piece of the firſt materials, or as the houſe thats ſo often repaired, *ut nihil ex priſtina materia ſuperſit*, which yet (by the Civil law) is to be accounted the ſame ſtill, as we ſee in *π. tit. de legat. 1. l. 65. ſi ita Sect.* 2. Little then follows in point of honor or excellency ſpecially to be attributed to the laws of a Nation in general, by an argument thus drawn from difference of antiquity, which in ſubſtance is alike in all. Neither are laws thus to be compar'd. Thoſe which beſt fit the ſtate wherein they are, cleerly deſerve the name of the beſt laws. And none are beſt or worſt but *ſecundum quid*. But upon this ground more to the purpoſe might have been ſaid for the *Engliſh* common laws, compared with the civil of *Rome*. For it appears that the Emperors from *Juſtinian*, who died in D. LXV. of *Chriſt*, until *Lothar* the 11. in the year CIↃ. C. XXV. ſo neglected the body of the Civil law (which now againſt an expreſs Conſtitution of *Juſtinian*, commanding that it ſhould not be read nor taught in any place ſaving *Rome*, *Berytus*, and *Conſtantinople*, is profeſt in every Univerſity) that all that time none ever profeſt it. But when *Lothar* took *Amalfi*, he there found an old copy of the *Pandects*, or *Digeſts*, which

as

as a precious monument he gave the *Piſans* (by reaſon whereof it was called *Litera Piſana*) from whom it hath been ſince tranſlated to *Florence*, where in the Dukes Palace it is never brought forth but with Torch-light, and other reverence. Under that *Lothar*, began the Civil law to be profeſt at *Bologna*, and *Irner*, or *Werner* (as ſome call him) firſt made Gloſſes on it about the beginning of *Frederique Barbaroſſa* in CIↃ. C. L. of Chriſt, and *Bologna* was by *Lothar* conſtituted to be *Legum & Juris Scholaruna & ſola.* And this was the firſt time and place of profeſſion of it in the Weſtern Empire. You may ſee *Odofredum apud Sigonium de regno Italiæ lib.* 11. *&* 7. *& Paul. Merul. Coſmogr. part.* 2. *lib.* 4. *cap.* 23. Why were they ſo neglected neer DC. yeers in the Empire, if their excellency were ſo beyond others, as is uſually ſaid by many, that to the purpoſe, know nothing of either them or ours? This part of ſtory of them I have noted elſewhere in the Preface to the *Titles of Honor.* And cleerly you ſee the profeſſion of them is not ſo ancient in the Weſtern Empire, as the lateſt of time, to which ſome moſt ignorantly refer the beginning of the common law; I mean as the *Norman William*, who arrived in the year CIↃ. LXVI. I think not, that good diſcretion can, out of any of this or the like add much

honor

honor to, or detract from either *Common* or *Civil* law; yet its fit to be remembred in anſwer of ſuch as ignorantly fetch a reaſon out of the antiquity of the profeſſion of the one. As if the profeſſion begun under *Lothar*, and ſince thus continued, were not meerly new, and not a recontinuance of what was in uſe under *Juſtinian*. But hereof too much.

Ad CAP. XXI.

8. *Teſtes.*] But ſome trials by our law have alſo Witneſſes without a Jury: as of the life and death of the Husband in *Dower*, and in *Cui in vitâ*. Examples thereof are in *Bracton lib.* 4. *tract.* 6. *cap.* 7. 2. *Ed.* 2. *tit.* **Trial** 46. 8. *Ed.* 2. *eod. tit.* 95. 9. *Ed.* 2. *tit.* **Judgement** 231. 2. *Elizab. Dyer fol.* 185. *a.* and in 13. *Elizab. Dy. fol.* 301. *a.* in Error by an infant to a reverſe fine, both inſpection and the teſtimony of four witneſſes concur to prove his infancy, and in 26. *Ed.* 3. *fol.* 70. *a. pl.* 6. a death in *Brittagne*, is ſaid, ſhall be tried by proofs. But all this is of iſſues, which properly have no viſne, whence a Jury may be. The courſe of Declarations alſo at this day ſhew, that witneſſes were reſpected in the beginning of every action. The concluſion is alwayes *Et inde producit ſectam.* Which *ſecta* or

or *suit*, in law-language, is nothing but witnesses to prove his action, as in the Courts of *writs* of *Right* they were wont to declare, *& hoc paratus sum probare per hunc liberum hominem meum A. B. & si quid*, &c. Which was a tender of Battel, as the other is of suit or witnesses. See *Glanvil. lib.* 2. *cap.* 3. And those proofs of the death of the husband in dower are called *secta* by *Bracton fol.* 302. *a.* and in *Nov. Narrat.* **suit & darraign bon** is onely *secta disrationatio bona.* i. good proof to maintain the count. In ancient time this suit, or witnesses were examined before any other issue, as in 18. *Hen.* 3. *Coram Rege apud Windsore rot.* 13. *in dors. in Turr. Lond.* In a *Recordare loquelam* that was in the Bishop of *Salisburies* court at *Sunnings*, the action being for a Mare, by *Walklin de Stok* against *William de la Guilhalle*, the entry is, *Et Willielmus producit* sectam *suam & ipsi quos produxit per se discordantes sunt in multis, & in tempore, & in aliis circumstantiis, quia quidam dicunt quod quædam equa mater ipsius pullani empta fuit*, &c. *& quidam dicunt*, &c. *Et Walkelimus producit* sectam *qui concordati sunt in omnibus & per omnia & dicunt omnes quos ipsi producit per se*, &c. The proofs of both sides are called *secta*. It was either this or some like case, that *Shard* intended in 17. *Ed.* 3. *fol.* 49. *b.* in *John*

Warreins

Warreins caſe, ſpeaking of a Juſtice that examined the ſuit, and it appears there that under *Ed.* 3. the tendering of ſuit or proofs was become onely formal, as at this day, like the *plegii de proſequendo.* But in *Hill.* 44. *Hen.* 3. *Coram Rogero de Thurkelby & ſociis ſuis juſtitiariis de Banco Rot.* 16. *in dorſo.* One *Gilbert Chytein* brought a *Replevin* againſt *William le Fouler*, and the defendant pleads *non cepit*, &c. *Et hoc offert de fendere contra ipſum & ſectam ſuam ſicut Curia Conſideraverit. Et quia prædictus Gilbertus nullam* ſectam *producit verſus prædictum Wilielmum, conſideratum eſt quod prædictus Willielmus eat inde ſine die, & Gilbertus in miſericordia.* See *ad cap.* 32. I omit, that in *Engleſherie* anciently, in a *Nativo habendo*, in proving a *deed denied*, and ſuch like, witneſſes by the common law are required as the ſpecial trial.

Ad CAP. XXIV.

9. W*Apentagia.*] In *Ethelreds* laws, which the Abbot *John Brampton* hath in a Ms. ſtory, *cap.* 4. *Habeantur placita in ſingulis* Wapentakis, *ut exeant ſeniores* 12. *thayni & præpoſitus cum eis & jurent ſuper ſanctuarium quod eis dabitur in manus quod neminem innocentem velint accuſare vel noxium concelare.* And the

the laws called the *Confeſſors*, *cap.* 33. ſay that *York-ſhire*, *Lincoln*, *Nottingham*, *Leyceſter*, and *Northampton*, call that *Wapentachium quod Angli vocant Hundredum & non ſine cauſa.* For he that was *præfectus Wapentachii*, or high Conſtable of the *Wapentach*, came amongſt them at the *Hundred* or *Wapentach* court, and with regardful entertainment, they all *cum lanceis ſuis ipſius haſtam tangebant, & ita ſe confirmabant per contactum armorum, pace palam conceſſa. Anglice n.* (ſo ſay thoſe laws) *arma vocantur* Wapen, *&* taccare *confirmare, quaſi armorum confirmatio, vel ut magis expreſſe ſecundum linguam Anglicam dicamus,* Wapentac *armorum tactus eſt.* Wapen *n. arma ſonat,* tac *tactus eſt.* Doubtleſs this deduction of the name favors of the truth. For amongſt the old *Germans* (whence our *Anglo-Saxons* came) that uſed to meet armed in their courts, when any one had ſpoken, if he were diſliked, *fremitu aſpernabantur*, if liked, *frameas concutiebant* (as *Tacitus* witneſſes) which well includes this touching or ſtriking together of weapons. *Honoratiſſimum* (ſaies he) *aſſenſus Genus eſt, armis laudare.* The Wapentakes, Hundreds, and Counties were firſt inſtituted by K. *Alfred*, about the year DCCC. LXXX. Of him, *Ingulphus p.* 495. *b. Totius Angliæ pagos & provincias in Comitatus pri-*

primus omnium Commutavit. Comitatus in Centurias, id eſt, Hundredas *& in* Decimas, *id eſt, Tithingas diviſit.* See alſo *Malmesburienſ. de geſt. reg. lib. 2. cap. 4.*

10. *Villas.*] *Villa* & *Villata* de *Norwich* de *Wallingford* and the like are in old Rolls, which alſo ſometime call like places, and the ſame, *Burgi* or *Civitates.* And the city of *Chicheſter* is *Villata de Ciceſtria* in *Itin. Suſſex* 47. *Hen.* 3. *rot.* 25. *in dorſo.* And there *rot* 44. *Burgus de* Horſham *venit per* XII. *Villa de* Brembre *venit per* 12. *Villa de* Shoreham *venit per* XII. yet *Bramber* and *Shoreham* are Boroughs as well as *Horeſham.* Parlamentary Boroughs. But alſo *Rot.* 38. is *Burgus de* Seford *venit per* XII. which is no Parliamentary Borough. The reſt all which now ſend Burgeſſes to Parlament in *Suſſex*, as *Lewes*, *Midhurſt*, *Grenſtede* and *Arundel*, are in that Eire called Boroughs.

11. *Hamletis.*] *Hameau* or *Hamel* is a member or Part of ſome ville or town, as you may ſee in 14. *Aſſiſ. pl.* 9. *&* 3. *&* 4. *Ph. & Mar. Dyer fol.* 142. it came firſt from Ham or Heim in old Saxon, ſignifying a circuit or territory, *Circulum vel ſeptum quo Pagi ſive Territorii cujuſpiam limites includuntur*, as the moſt noble *Hans Douze* notes out of the Records of *Holland* in *Annal. Holland. lib.* 2. *&* 7. *fol.* 388.

12. *Annale*

12. *Annale est.*] But before the statute of 14. *Ed.* 3. *cap.* 7. Sheriffs continued usually in their offices longer.

13. *Nec duobus.*] It should be *nec tribus* by *Stat.* 1. *Rich.* 2. *cap.* 11.

Ad CAP. XXV.

14. DE *Hundredo.*] For the number of the Hundredors at this day, see the statutes of 35. *Hen.* 8. *cap.* 6. & 27. *Eliz. cap.* 6.

Ad CAP. XXVI.

15. FAlsum *fecerunt sacramentum.*] The ancient punishment in *Attaint* was as its here described, and the like in conspiracy for perjury. See *Glanvil. lib.* 2. *cap.* 19. 4. *Hen.* 5. *tit.* Judgement 220. 27. *Assis. pl.* 59. & 46. *Assis. pl.* 11. The judgement is called *the villanous judgement in* 14. *Ed.* 3. *fol.* 34. *b.* See *Bracton* also *lib.* 4. *tract.* 5. *cap.* 5. & *Flet. lib.* 5. *cap.* 21. & *Stamford fol.* 175. And the case in *Temp. Ed.* 1. *tit.* Attaint 70. is more large in my Ms. Report of 21. *Ed.* 1. *fol.* 58. it is brought against the Abbot of *Westminster*, as there its shewed, but the judgement by *Weylond* is in these words, **Dur ceo agarde cest court que ceux de l'enquest perdent franche lep de ceo lour en auant a tous tours e lour**

terres & leur chatens a la volonte le Roy, & lour cors a la priſon, & Johan fett allous de cele rent & ſeit reſtore de ſes damages. But ſee now Stat. 23. *Hen.* 8. *cap.* 3. another judgement in *attaint.*

16. *Nec alicubi recipientur in teſtimonium veritatis.*] Our books expreſs that, by **que miſe ne ſoit en teſtimoignance de verite**, 24. *Ed.* 3. *fol.* 34. *b.* 33. *Hen.* 6. *fol.* 55. *a.* It is titled the loſs of frank law, **franch ley** in 27, *Aſſiſ. pl.* 59. & 46. *Aſſiſ. pl.* 11. that is, he which is thus convict of perjury, ſhall be no more **Otherſwarth** as *Bracton* calls it *lib.* 4. *tract.* 4. *cap.* 5. & *cap.* 19. *Sect.* 2. where his words are of ſuch a one, *Legem amittit, & ideo dicitur quod non eſt ulterius dignus lege quod Anglice dicitur*, **he ne is othes worthe that is enes gylty of oth broken.** Which agrees with K. *Knoot* his law, *cap.* 33. that one ſo convicted **ne bee thanon forth ath ȝ worthe**, the ſelf ſame words almoſt, being in *leg. Edwardi ſenioris cap.* 3. & *leg. Athelſtan cap.* 25. That which is *legem amittere* in this ſenſe in *Bracton*, is *liberam legem amittere* (anſwering to the loſs of frank law) in the entries of judgement againſt them, and *legem terræ amittere* in *Glanvil*, and ſometime in *Bract.* & *Fleta.* See alſo *Regiam Majeſtatem lib.* 1. *cap.* 14. *Sect.* 5. Hence may be truely underſtood that of the grand Charter,

ter, *cap.* 29. —— *nec super eum ibimus nec super eum mittemus, nisi per legale judicium Parium suorum vel per legem terræ.* I would English it thus: *Neither will we enter on his possession nor commit him* (for in that place of the Charter of 17. of K. *John* by which this was made, it is *nec eum in carcere mittemus*, perhaps it should be *carcerem*, as the language requires) *but legal judgement of his Peers, or men of his condition* (that is by Jury) *or by trial of him by oath, or wager and doing his law. Lex terræ* here is onely as it signifies in *amittere legem terræ*. And **Ley gager** and a Jury are the two trials, as I suppose, there thought on. And indeed in old rolls nothing is more usual then in criminal actions (not capital) and civil, of any kind to admit *Ley gager*, as in *Attachments* upon *prohibitions*, *quare impedits* and the like, which is against all knowledge and practise of law in later ages. Every one knows that at this day *Vadiare legem* is to offer the oath upon trial that way, and *facere legem* is to make the oath, all which shew that *lex* and *lex terræ* signifie in this notion onely the Oath of a man not disabl'd by law. And, in that statute, it is meerly the oath upon *Ley gager*.

17. *Calumnire potest* 35. *homines.*] Peremptory challenge is now reduced to xv. by *stat.* of 22. *Hen.* 8. *cap.* 14.

Ad C A P. XXXII.

18. S*I quæ supra altum mare*, &c. *coram Admirallo*] As then, so now, the Admiralty hath Jurisdiction of things done upon the main sea, and what that Court might or may do is shewed and limited by the statutes of 13. *Rich.* 2. *cap.* 5. & 15 *Rich.* 2. *cap.* 3. & 2. *Hen.* 5. *cap.* 6. The first case in our law extant touching marine jurisdiction is in *Temp. Ed.* 1. *tit.* Avowry 192. in a *Replevin* brought of a ship upon the coast of *Scarborough*, where no mention is of the Admirals authority, as the print is in the Abridgement, but con sans of t is allowed to the common law. Yet in my Ms. Report of 25. *Ed.* 1. *fol.* 82. *b.* the case is thus more at large, and expresly speaks of the Admiral, *William Crake* de *Holtham* fuit, sommon a respondre a *Robert de Beufo* de play pur que il auoit pris vne sune neef pris de xl. l. en la mer iuste la costere de *Scardburn* & de yleke le amen a *Holtham* en le County de *Norff. Mutford.* del hore qu il avute Conte de vne prise fete en la mer que est hors del conte issi que si pais se ioyn fist, il ne sauereint a quel viscont mander pur fere vener pays e dd iudgement si ceyns pussont de ceo conuster. *Ed. antre part*, il lysont assigne Admiral de par le Roy sur la mer a oyer & terminer les pleynts de

de choſe fait in mer, e neutendons point que vous volys a eux tolyr iurisdiction, &c. *Bery* Nous auons poer general per my tut Engleterre, mes del poer des Admirals dont vous parles ne ſauons rien, ne rien de noſtre poer a eux volomus aſſigner, ſi ceo ne ſeiſt per commandment le Roy de quey vous ne monſtres rien, &c. *Mutf.* ſire le luy on ils dient la neef eſte pris neſt in nul viſne de que, &c. *Haward.* il eſt iſſint viſne que ſi vns home occiſt vn auter la il ſerra pris e a meſn al terre e pende auſi ben come pur fet fet ſur la terre. *Metingham*, nons vous dions que nons avons dions que nous avons auſi ben poer de coniſans de fet fet en mer come ſur terre, dont a gard que vous reſpondes ouſter. Unleſs they meant there, that the viſne might be out of the adjoyning County as in old trialls of iſſues in *Wales*, I conceive not their diſallowance of the exception againſt the place, whence properly no viſne could be. For ſuch trials of iſſues in riſing in *Wales*, or in the Counties Palatin by the adjoyning Counties, ſee eſpecially, 18. *Ed.* 2. *tit.* [illegible] 382. 24. *Ed.* 3. *fol.* 33. *b.* 30. *Hen.* 6. *fol.* 6. *b.* 35. *Hen.* 6. *fol.* 30. *a.* 45. *Ed.* 3 *tit.* Viſne 50. I have tranſcribed the caſe according to the very letters of my copy. It ſeems by this that in thoſe times the common law had coniſans of things done upon the

Engliſh ſea, however it afterward kept its limits *infra corpus Comitatus*, leaving the Sea to the Admiralty. Some caſes in old records make it alſo. *In Placit.* 37. & 38. *Hen.* 3. *Rot.* 10. *Devon.* One *Galfredus de Leyſina* brings *treſpaſs* againſt *Ralf de Valle torta*, and others, *quare aſportaverunt bona quæ fuerunt in navi quæ fuit* Clementis *de* Bolan *quæ nuper periclitabatur in Coſtera de* Brikeſham *quæ bona dominus Rex dedit predicto Galfredo tanquam wreccum maris*, &c. The defendants plead, in effect, the general iſſue, *& ſic ad patriam*, although, through want of form in the declaration it appears not whether the goods were taken, being in or out of the Sea, yet it ſeems they held that matter indifferent. So in *Itin. Suſſex apud Ciceſtriam* 47. *Hen.* 3. *Rot.* 10. A fragment of a torn roll left in the bundle, hath this ſigne of a declaration remaining, *Rogerus de Levere, & Radulphus de Levere queruntur de* Ricardo *de* Hateſuld —— *proxima ante feſtum ſancti Martini hoc anno ſe credebant ſalvo* —— *ibidem fregerunt navem ſuam ſuper quendam locum* —— *navis & ſocii ſui circiter quinque ſubmerſerunt.* Theſe words are onely left upon the 9. roll, the reſt being by ſome wicked hand, purpoſely, it ſeems torn off. But its eaſily conjectur'd that this was an action on the caſe, brought by one that had com-

mit-

mitted himself or his goods to the defendants care for his passage, with his company, over sea, and that the offence was, that the defendant had by negligence made shipwrack on the sea, or some such like; and though the *Assumpsit* at land might make such an action at this day, maintainable at common law, according to the learning in *Dowdales* case *Rep. 6. fol.* 47. yet in those times so ancient, I cannot imagin the difference of a contract at land from one at sea was thought on. Likewise in *Trin.* 50. *Hen.* 3. *apud Westm. in Banco rot.* 22. the entry is, *Suff. Abbas Westmonasterii per attornatum suum obtulit se quarto die versus* Petrum *filium* Johannis, Richardum *fratrem ejus*, Walterum Cheyney, Augustinum *filium Jocei*, Johannem *fratrem ejus*, Richardum Andred, Anthonium Clunch, & Richardum Silkento *de placito cum homines ipsius Abbatis nuper duci fecissent quandam navem suam per Costeram maris prope* Dunwicum, *bonis & catallis ipsius Abbatis & hominum suorum cariatum*, *iidem* Petrus *& alii simul cum Augustino filio Johannis navem prædictam cum bonis & catallis prædictis ab hominibus suis prædictis abstulerunt, & navem & bona & catalla sic Ablata detinent ad damnum ipsius Abbatis & hominum suorum sexaginta librarum & contra pacem*, &c. Unless here the ship were taken upon the sea *super*

Coſteram maris I underſtand it not. But touching their trials in the Admiralty, in ſome hands is extant a Ms. **de l' Office del Admiralty** tranſlated into Latin by one *Thomas Rowghton*, calling it *De officio Admiralitatis* (the uſe of two copies of it, with the roll of *Oleron*, written all about *Hen.* 6. was communicated to me by that learned and truely ſufficient Sir *Walter Raleigh* Knight) where inditements and trials are ſuppoſed to be by a Jury of 12. as at common law. But the book it ſelf is rather a monument of antiquity (yet not above about *Hen.* 6. then of authority, and rather as a purpoſe of what was in ſome failing project, then ever in uſe and judgement held authentical. Moſt of it is againſt both the now receiv'd and former practiſe. Yet theſe things hath it worth obſervation, that is, conſtitutions often mentioned touching the Admiralty of *Hen.* 1. *Richard.* 1. King *John* and *Edward* 1. which are elſewhere hardly found. In *rot. Pat.* 23. *Ed.* 1. *William Leyburn* is Admiral, and often mention is after that of the Admirals of the North and South ſeas, the diſtinction being the *Thames* mouth, as *Trent* was wont to be for the general Eſcheatorſhip, and is for the Juſticeſhip of the Foreſts. The firſt mention of the *Admiral* in our printed law, is in 8. *Ed.* 2. *Itin. Canc. tit* **Cozone** 399. with that,

that, fee 40. *Ed.* 3. *fol.* 44. 40. *Aſſiſ. pl.* 25. *Stamford cap.* des Coyners, Sir *Henry Conſtables caſe in Rep.* 5. *fol.* 107. & *Hill.* 2. *Jacob. Philips caſe in Com. Banco.* & 19. *Hen.* 6. *fol.* 7. *a.* and note that in 7. *Rich.* 2. *Statham tit.* Treſpas 54. a juſtification is in treſpas in theſe words nous les puſſomous en le haut mere ouesque les Normans queux ſont enemies le Roy, iudgement ſi action, and held good. If this iſſue offered riſing wholly on the main ſea, might not be tried at the common law, how could it be good? either a traverſe muſt have been to the taking in the count, or elſe the replication muſt have made the iſſue upon two affirmatives (which is againſt the courſe of our law) or elſe queſtionleſs they took it in thoſe times triable, as it was pleaded by a Jury of the viſne, either adjoyning to the coaſt (which is fitteſt) or of the place where the action was laid. See alſo 46. *Edw.* 3. *Statham tit.* Treſpas 38.

19. *Curiæ Conſtabularii*] That court and the great Officer, chief Juſtice of it, hath been long diſcontinued. Neither was any continuing *High Conſtable* of *England* ſince 12. *Hen.* 8. when *Edward* Duke of *Buckingham* was beheaded. He was the laſt High Conſtable, and by inheritance of tenure from the *Bohuns*, as you ſee in 6. *Hen.* 8. *Kel. fol.* 170. *& ſeq.* & 11. *Eliz.*

Eliz. Dy. 285. *b.* & *vide Rot. Fin.* 3. *Ed.* 1. *memb.* 14. The Court is that which was titled the *Court of Chivalry*, wherein all matters of Armes, Treaſon committed beyond ſea, War, and the like, which could not be tried at the common law, were determinable *ſummarie & de plano ſine ſtrepitu & figura judicii*, as the words are in *Part.* 1. *patent.* 7. *Ed.* 4. *memb.* 9. where it appears the office had been given to *John* Earle of *Worceſter*, to hold plea of ſuch things *quæ in Curia Conſtabularii ab antiquo videlicet tempore Domini Willielmi Conqueſtoris quondam Angliæ progenitoris noſtri ſeu aliquo tempore citra tractari audiri examinari & decidi conſueverunt aut de jure debuerunt*, who ſurrendering his patent, in the ſame termes with particulars of the office, it is granted to *Richard Widevil* Earle of *Rivers*, the Kings father in law, for life, and after his death to *Anthony Widevil*. By the 1. *ſtatut of* 13. *Rich.* 2. *cap.* 2. & 1. *Hen.* 4. *cap.* 14. the office and juriſdiction of the court is beſt deſcrib'd, you may ſee 37. *Hen.* 6. *fol.* 3. & 20. 30. *Hen.* 6. *fol.* 5. 6. *Hen.* 8. *fol.* 171. *b. Brook tit.* **Prerogative** 31. Some Records are extant of the whole formal proceeding by the law of armes in this Court, as ſpecially that of 17. *Rich.* 2. in the Tower concerning the Caſtel of *Breſt*, between *Hanley* and *Roches*. Their trials were by

by Battel or Witneſſes. Special commiſſioners have now a good part of this juriſdiction. In 2. *part rot. Patent.* 23. *H.* 6. *memb.* 20. *Tho. Kent* Dr. of law is made *ſub conſtabularius angliæ* for life.

20. *Legem mercatoriam.*] that is ſuch as the law of the ſtaple in *ſtat.* 2. 27. *Ed.* 3. *cap.* 2. Mention is of it in *Regiſt. Orig. in Computo fol.* 135. *a & Fitzh. Nat. Br. fol.* 117. D. Indeed the nature of this law is well expreſt by *Bartol.* in *l. tit. Mandativel contra l.* 29. Sect. *quædam* 4. ſpeaking of the Merchants court (which name may well be given to the court of **Pee poudroue**.) *Nota*, ſaith he, *quod in Curia Mercatorum debet judicari de bono & æquo, omiſſis juris ſolemnitatibus. Hoc non dico quod debeat intelligi non habito reſpectu ad jura civilia quod eſſet contra* l. bona fides tit. Depoſiti, *ſed debet intelligi non inſpectis ſolennitatibus juris, hoc eſt non inſpectis apicibus qui veritatem negotii non tangunt, ut ſi eſſet intentata actio directa cum competebat utilis, vel non erat conteſtata lis & ſimilia.* For in common ſociety of Merchants, and mutual contracts, equity and good conſcience rather then ſtrict law is required. *Tryphonius* ff. *tit. Depoſiti vel contra l.* 13. *Bona fides quæ in contractibus exigitur, æquitatem ſummam deſiderat.* A ſpecial caſe of this law Merchant is in *Itin. Derb.* 2. *Edw.* 2. *Ms.* where *John Combton* brings debt *ſecundum*

dum legem mercatoriam upon a tally, againſt another Merchant, and tenders ſuit by two witneſſes: the defendant wages his law, but the judgement is thus by *Ornesby* pronounced. **John de Combton Marchand port vn bꝛief clens vers on** *Rauf.* **Marchand & demande vi. marks par vn Juſticies forme ſelon la ley Marchand** (it had been commenc't by *Juſticies*, and came out of the **common** place into the Eire) **& ad mis auant vn faille la quelle il tender a pꝛover per ii s. per** *Richard* **& par** *Geffrey* **que eſtepent tal blee meſurer** (the debt was due for corn) **& al liverer, mes vous per voſtre ley vous voudꝛes coverer la quele ceſt coꝛt en ceo cas ne doet my reſceiver & refuſes la pue que il vous tend ſelon ley Marchand & ſelon la nature de ſun bꝛief, per que agard ceſt court que John reſcouere ſa debt vers vous come vers non defendu & ſes dammages de cent ſous.** See for this matter of ſuit, *Ad cap.* 21.

Ad CAP. XXXIII.

21. *Sic agentes proinde leges Civiles ad Angliæ Regimen producere.*] I confeſs I here underſtand him not. What Kings of *England* ever deſired the Civil laws of *Rome*? I have read of a proteſtation againſt them in Par-

Parlament by the King and Lords, which you may ſee in *Rot. proceſſ. & jud.* of the appeal of *Thomas* Duke of *Gloceſter*, and others, againſt *Alexander* Archbiſhop of *York*, *Robert de Veer* Duke of *Ireland*, *Michael de la Pole E.* of *Suffolk*, and *Robert Treſilian* chief Juſtice, *in Rich.* 2. *Parlamento Weſtm.* 3. *Febr. anno.* 11. where upon default of the appellees, the appellants deſire that the court would proceed to judgement, ſur quoy les dits Roy noſtre ſeignior & ſeignios du Parlament prſtront deliberation tarq lendemain le marcedy prochein enſuant, a quel temps les *Juſtices & Sergeants & autres ſages du ley de roialm* & aurint les *ſages de la ley Civil* ſeuront charges de par ley Roy noſtre dit ſeigneur, de doner loial Counſell as ſeigneurs du Parlement de duement proceder en la cauſa de l'appel ſuadit, les queur *Juſtices Sergeants & ſages de la ley du roialm* & aurint les dits *ſages de la ley Civil* prſtront ent deliberation, & reſponderont, as dits ſeigneurs du Parlement que ils auoient veue & bien entendue le tenor du dit appell, & diſoient que meſme l'appele ne fuſt pas fait ne afferme ſolonque ſ' ordre que l'une leyon lautre requiert, ſur quoy les dits ſeigneurs du Parlement prſtteront ent deliberation & auiſement, & per aſſent du Roy noſtre dit ſeigneur & de lour common accord eſtoit declare que en ci haut crime

trime come est pretendue en cest appelle que touce le person du roy nece dit saur & lestate de tout son roialm, perpetre persons que sont peers du roialme ouesque autres, la cause ne serra ailors debue que en parlement, ne per autre ley que ley & cours du parlement & q' il eppertient as seigneurs du perlement & a lour franchise & libertie d'ancien custume du parlement destre juges en lieur cas, & de lieur cas a iugger per assent du parlement, par assent du roi & que ensi serra fait en cest cas, par agard du parlement, pur ce que *le roialme d' Engleterre n' estoit devant ces heures ne al' entent dis roy nostre dit seignior & seigniors du parlement unques ne serra rule ne governe per la ley Civil*, & aurint leur entent nest pas de reuler ou gouerner cy haute cause come cest appell est, que ne serra ailors trie ne termine que en Parlement come dit est, per cours proceste & ordre vse en ascun court ou place plus bas deins mesme le roialm, queur courts & places ne sont que executors d'aunciens leys & custumes du roialme & ordinances & establishments du parlements, & feust auisse au mesmes les seigneurs du parlement par assent du roy nostre dit seigneur, que cest appel fait fait & afferme bien & assets duement & le parcelle d'ycelle bone & ferme solomnes les leys & cours du parlement, & pur tiel l' agarderoit & aiuggera-

it.

ſt. I remember alſo King *Stephen* his publique edict againſt the laws of *Italy*, but remember not any ſtory or authority teaching that any of our Kings would have had them here uſed. That of *Stephen* is related by that noble and moſt learned Frier *Roger Bacon* in his *Compendium Theologiæ*, or his *Opus minus* (both thoſe names are of one Ms. book) where ſpeaking of the Civil laws of *Italy*, and that they are abuſed, and too much affected by Clergy men, leaving their profeſſion to ſtudy thoſe laws, he thus adds, *Præterea omne regnum habet ſua jura quibus laici reguntur; ut jura Angliæ & Franciæ, & ita ſit juſtitia in aliis regnis per conſtitutiones quas habent ſicut in Italia per ſuas. Quapropter cum jura Angliæ non competant ſtatui clericorum, nec Franciæ, nec Hiſpaniæ, nec Almanniæ, ſimiliter nec jura Italiæ ullo modo. Quod ſi debeant clerici uti legibus patriæ, tunc eſt minus inconveniens ut Clerici Angliæ utantur legibus Angliæ & Clerici Franciæ utantur legibus Franciæ, quapropter maxima confuſio Clericorum eſt quod hujuſmodi conſtitutionibus laicalibus ſubduntur colla. Rex quidam Angliæ* Stephanus *allatis legibus Italiæ in Angliam publico edicto prohibuit, ne ab aliquo retinerentur, ſi igitur laicus princeps laici principis alterius leges reſpueret, multo magis omnis clericus deberet reſpuere leges laicorum.*

rum Addo etiam quod magis concordant jura Franciæ cum Angliæ & econverso propter vicinitatem regnorum & communicationem majorem gentium istarum quam Italiæ & illarum. Quare deberent magis clerici Angliæ subjicere se legibus Franciæ & e converso quam legibus Lombardiæ. This was a kind of invective against the receiving of the Civil law amongst the Clergie in any other nation, saving that wherein it was first bred, that is, the *Italian*. Our stories have no mention of this edict of *Stephen*. But it is in an author of better authority (in regard of his time) then Frier *Bacon*. I mean *John* of *Salisbury* living under *Hen.* 2. He in his *De Nugis Curialium lib.* 8. *cap.* 22. speaking of such as too prophanely medled with what the Clergy had to do, goes on with *alios vidi qui legis libros deputant igni nec scindere verentur si in manus eorum pervenirent jura vel Canones. Tempore Regis* Stephani *a regno jussæ sunt leges Romanæ quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis asciverat. Ne quis etiam libros retineret edicto regio prohibitum est, & vicario nostro indictum silentium. Sed, deo faciente, eo magis virtus legis invaluit, quo eam amplius nitebatur impietas infirmare.* Whereas Frier *Bacon* takes it cleer that he prohibited the Civil laws, this *John* of *Salisbury* (a man of great place and autho-

authority both with the King and Pope) seems to affirm it onely of the Canon law. For he remembers it as an offence to the Church. Indeed in Archb. *Theobalds* time, both the Canons and Civil law began to be publisht, and its like enough that he might bring in *Iuo's* or *Gratian's* Decree. *Iuo's* was written in time of *Hen.* 1. and *Gratians* under King *Stephen.* That *Theobald* was before Abbot of *Bec* in *Normandy*, and went to *Rome* for his Pall, and so, it seems, brought those laws home with him in 3. *Stephani Regis.* Its marvail that our stories are so silent of this of King *Stephen.* But see the Monks *sub anno* 1139. and specially, *Guil. Malmesb. hist. Novell.* 2. *fol.* 10. *b.* touching the councel of *Winch ster*, where the ground of his Prohibition perhaps shews it self.

Ad CAP. XXXIV.

22. *Quod Principi placuit.*] That is *Ulpians* in π. *tit. de Constit. Princip. l.* 1. *Quod Principi placuit legis habet vigorem, utpote cum lege Regia, quæ de imperio ejus lata est, populus ei & in eum omne suum imperium & potestatem conferat.* The same is in *Instit. tit. de Iure nat. Sect. sed & quod*, and thence have the Greek Lawyers their ὅπερ ἀρέσκει τῷ Βασιλεῖ Νόμος

ſes, as *Hermenopulus* a Judge of *Theſſalonica* expreſſes it *Procheir. lib. 1. tit. 1.* and the Emperor is in *Near. Diatrax.* 105. *cap.* 2. titled Νομος εμψυχος, *a living law.* The two Codes of *Theodoſius* and *Juſtinian*, the *Gregorian* and *Hermogenian* Codes, the *Nearæ Diataxeis* or *Authentiques*, and the reſt of the *Novellæ* are nothing but Conſtitutions by the Emperors, to whom the State of *Rome* permitted all by the *lex Regia* that was before in the people of *Rome.*

Ad CHAP. XXXIX.

23. *Prolem ante matrimonium.*] This point of Civil law, is text in *C. tit. de Naturalibus lib.* 10. *cum quis. Quomodo* (ſaies *Juſtinian*) *non eſt iniquiſſimum ipſam ſtirpem ſecundæ poſteritatis priorem quaſi injuſtam excludere, cum gratias agere fratribus ſuis poſteriores debeant, quorum beneficio ipſi ſunt juſti filii, & nomen & ordinem conſecuti.* For the birth of the firſt is often cauſe of the marriage following. But it is limitted by ſome Doctors, that the woman be before *in concubinatu, infamilia retenta*, that there be *indubitatus affectus ſicut in uxore*, &c. as you may ſee in *Bartol. ad finem C. de Concubinis. Mynſing. ad Inſtit. de Nuptiis Sect. Aliquando. Gothefred. ad Novel.* 89. *cap.*

cap. 15. The Canon law agrees with the Civil in this matter, as is shown in an Epistle of Pope *Alexander* 3. to the Bishop of *Excester* in *Ext. tit. Qui filii sint legit. c.* 6. *Tanta est vis.*

Ad CAP. XL.

24. S*I bonus est bastardus.*] yet see *Tiraquell de Nobilitate cap.* 15. *& Pontus Heuterus* his collection touching Bastards at the end of his *De veteri Belgio*, and you shall find, that most of the brave spirits and able, of the former times, are in the catalogue of famous Bastards. Remember *Euripides* in his *Andromach*,

† Νόθοι τε, *Jaies he*, πόλλοι γνησίων ἀμείνονες.

† *Many Bastards are better then legitimate.*

Ad CAP. XLII.

25. P*Artus semper sequitur ventrem.*] That is in respect of being free or bond. *In liberali causa, matris non patris inspicitur conditio C. tit. de lib. causa l.* 28. *avi & l.* 42. *placuit & de rei vendic l.* 7. *Partum*, where the DD. dispute this point. But in matter of honor, or, as it were, hereditary office their law is otherwise, as you may see in *C. tit. de Decuri-*

enibus l. 22. *eos. l.* 36. *Exemplo l.* 44. *nullus & tit. de Murilegulis l.* 15. *qui aut.* But the true reaſon was upon this; that where marriage or *jura connubii* could not be, there alwayes *partus ſequebatur ventrem*, in regard no legal father was of ſuch a birth, and the *jura connubii* extended before Chriſtianity receiv'd only to free men. *Ulpian* in his *Tituli, tit. de his, qui in poteſtate ſunt* hath theſe words, which are more worth then all the barbarous Doctors comments. *Connubio interveniente, liberi ſemper patrem ſequuntur; non intervenient connubio, matris conditioni accedunt, excepto eo qui ex peregrino & cive Romana, peregrinus naſcitur: quoniam lex Menſia* (from whom that law is ſo called I remember not) *ex alterutro peregrino natum deterioris parentis conditionem ſequi jubet. Ex cive Romano & Latina, Latinus naſcitur, & ex libero & ancilla, ſervus, quoniam quum his caſibus connubia non ſunt, partus ſequitur matrem.* For his ſpeech of a *Roman's* marrying with an *Italian* woman (not a *Roman*) beleve it not without examination of ſuch ſtory as you may find collected in *Carol. Sigon. de antiq. jure Civ. Rom. lib.* 1. *cap.* 9. and others dealing with that ſubject. But clearly its true generally, that where *jura connubii* were not, there the *Roman* law-makes the iſſue follow the mother, as the law of nature

ture requires, which the ſame *Ulpian* ſaith alſo *in π. tit. de ſtatu hominum l.* 24. *lex.* in which title *l.* 19. *elſus* agrees with what we have tranſcribed from *Ulpian.* And the marriages with bond perſons, were always accounted but *contubernia*, and not *connubia*, and they were ſtiled *contubernales*, not *conjuges*, as appears in *π. tit. de legatis* 3. *l.* 41. *uxorem Sect.* 2. *Codicillis, & C. tit. de inceſt. nuptiis l.* 3. *cum ancillis.*

25. *Mulieres honore maritorum.*] The text is not vouch't out of the true place, it is in *C. tit. de incoliſ. l. fin.* and alſo in *C. tit. de Dignit. l.* 13.

Ad CAP. XLIV.

27. *Proximis de eorum ſangine.*] The Civil law firſt gave the wardſhip (of males till XIV. of females till XII.) to the *adgnati*, or thoſe *qui per maſculos conjunguntur*, and this was by the laws of the XII. tables, as appeareth *π. tit. de legitimis Tutoribus l.* 1. *Inſtit. de legit. tutela.* But the difference twixt *adgnati* and *cognati* both in inheritance, as alſo in wardſhips, *Juſtinian* took away in *Authent.* 118. *cap.* 5. and this is that which is here ſpoken of, and ſo is that law at this day.

28. *Ex parte matris.*] This matter of ſo-

cage wardſhip is grounded upon that ancient ground, held to this day regularly. *Nunquam cuſtodia alicujus de jure alicui remanet de quo habeatur ſuſpicio quod poſſit vel velit aliquod jus in ipſa hereditate clamare. Glanvil* hath it *lib. 7. c.* 11. & *Bracton lib.* 2. *c.* 37. *Sect.* 6. which is the ſame in ſubſtance in *Littleton Sect.* 123. and *Breton cap.* 66.

29. *In actibus bellicis.*] For, the ground and cauſe of Knight ſervice wardſhips, was in this, that the Lords of whom the infants held, might bring them up till full age, and inſtruct them in military performances, that ſo they might be better able to do their ſervices by which they held; which becauſe they could not do in their infancy, the profits of the land was, as at this day, taken by the Lords to ſupply the defect of ſervice. Neither is this cuſtome of Wardſhip ſo new, as *Randolf Higden* in his *Polychronicon*, or rather ſome others not underſtanding him, ignorantly make it, by ſuppoſing the beginning of it here under *Hen.* 3. Cleerly Wardſhips were before and from the *Normans*, at leaſt. See the *Grand Cuſtumier*, and *Glanvil lib.* 7. *cap.* 9. Neither, if *Higden* himſelf had underſtood thoſe words in his Chronicle which he took out of a former, written by another Monk of *Cheſter*, which I have ſeen, had any authority there been for

Henry

Henry the thirds beginning them. His words are theſe, *ſub anno* 12[illegible], and 6. *Hen.* 3. *Magnates Angliæ conceſſerunt Regi Henrico Wardas hæredum & terrarum ſuarum quod fuit initium multorum malorum in Anglia.* An old Chronicle in that ineſtimable Library of Sir *Robert Cotton*, written by another of *Higdens* covent, under the ſame yeer; *Magnates Angliæ reddiderunt Wardas ſuas Regi quod fuit initium malorum.* This Monk knew what he ſaid, and uſed the word *Wardas* chiefly for Forts Caſtels, Honors, and the like, by which the poſſeſſors, preſerved their ſafety in thoſe troubleſome times. For at *Northampton* all ſuch were rendered to the King by the Nobility, upon the exaction of *Hubert de Burgo* chief Juſtice, as both *Matthew Paris*, and *Florilegus* expreſs in theſe words, *reddiderunt ſinguli caſtella, municipia, honores & cuſtodias Regi quæ ad coronam ſuam ſpectare videbantur.* Perhaps *cuſtodiæ* might here comprehend the wardſhip too of ſome heirs: But if ſo, yet they were ſuch as ſome great men poſſeſt by reaſon of ancient tenures and the King would then have with the Caſtels, and Fortreſſes by others held, that he might enjoy them with their inheritances, as part of ſecurity againſt the Barons. No ſuch intent is in any of the elder Monks, as ſome would extract out of *Poly-*

chronicon. Neither was that given of Wardſhips to the King, other then as if the Nobility ſhould now give all their Wards to the King; ſuppoſing that the ſtory were chiefly of giving Wardſhips of body and land in the common ſenſe of *Wardæ*, as *Higden* miſreports it. But for the true underſtanding of that in ſtory, take *Rot. Fin. 6. Hen. 3. memb. 4.* where a recital is *proviſum eſt de conſilio Archiepiſcopi Cant. & Epiſcoporum Angliæ & H. de Burgo Juſtitiarii noſtri & Comitum & Baronum noſtrorum quoda die ſci Barnabæ Apoſtoli proximo præterito caperentur in manum noſtram omnia dominica noſtra*, &c. and hereupon writs go into all Shires, to ſeiſe into the Kings hands all ſuch lands, caſtles, forts, mannors, *&c.* But for the antiquity of Wardſhips in *Britain*, both *England* and *Scotland*. See alſo *Hect. Boet. l.* 11. *Buchanan Rer. Scot. l.* 6. *&* 10. *& leges Malcolmi* 2.

Ad C A P. XLVI.

30. *Duodecim denariorum valorem excedat.*] So is it underſtood in the ſtatute of *Weſt. 1. cap.* 15. that ſpeaks of Inditement of **petit larceny que n'amount ouſter le value de xii. deniers**. And therewith agrees *Itin. Canc.* 8. *Ed.* 2. *tit.* **Coron** 404. 406. *&* 415. But

But by *Breton cap.* 15. value of XII. d. without more, makes it capital felony. So are alſo opinions in 18. *Aſſiſ. pl.* 14. 22. *Aſſiſ. pl.* 30. See *Stamford lib.* 1. *cap.* 15.

Ad CAP. XLVII.

31. *In univerſitatibus.*] Indeed the ſtudy of the common law hath not place in our Univerſities of *Oxford* or *Cambridge*, becauſe another Univerſity (the Innes of Court) is appointed for it. Yet the ſtatutes of the Univerſity of *Cambridge*, *Earum legum* (ſays Doctor *Cowell* in his Epiſtle before his *Inſtitutions*, as he calls it, of the laws of England) *quas habet patria noſtra, impetritos nos eſſe prohibent, ut differentias exteri partiique juris ſic cognoſcamus.*

Ad CAP. XLVIII.

32. *Gallica.*] Touching this, *Ingulphus* Abbot of *Crowland*, at the conqueſt, thus: *Ipſum etiam idioma* (Normanni) *tantum abhorrebant, quod leges terræ, ſtatutaque Anglicorum regum lingua Gallica tractarent: & pueris etiam in ſcholis principia literarum grammatica gallice, ac non Anglice traderentur, modus etiam ſcribendi Anglicus omitteretur &*

modus

modus Gallicus in chartis & in libris omnibus admitteretur. And *Robert Holkot* a learned Dominican Friar in *lect.* xi. *super Sapientiam. Narrant historiæ quod cum Willielmus Dux Normannorum regnum Angliæ conquisivisset deliberavit quomodo linguam Saxonicam posset destruere & Angliam & Normanniam in idiomate concordare, & ideo ordinavit quod nullus in Curia regis placitaret nisi in Gallico, & iterum quod puer quilibet ponendus ad literas addiscceret Gallicam & per Gallicam Latinam, quæ duo usque hodie observantur.* He saies the French continued till his time. For he died in the great plague 24. *Ed.* 3. But by statute of 36. *Edw.* 3. *cap.* 15. it was altered, which is the Statute this author speaks of.

Ad CAP. LI.

33. A *D Peruisum.*] This *Chaucer* remembers in his Sergeant.

A Sergeant at law ware and wise,
That often had been at the Peruise.

It signifies an afternoons exercise or Moot, to the instruction of young Students, bearing the same name originally (I guesse) with the *Parvisiæ* in *Oxford*, as they call their sitting Generals

rals in the ſchools in the afternoon; which ingenuouſly I confeſs, I firſt learned out of Mr. *Wake* his *Muſæ Regnantes pag.* 125. where he devides the *Quodlibets* or *Diſputationes Magnæ*, which are their exerciſes of Regent-Maſters in the forenoon, from *Parvæ*, that is, Scholers exerciſe in the afternoon. *Has* (are his words) *quia iis inferiores*, Parvas, *jam etiam corrupto nomine*, Parviſias *dicere conſuevimus.*

FINIS.